Harrison Steel Castings Company *and* Inez Lorene Tornquist *and* Debra L. Tornquist *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America *and* Kathy L. Spear. Cases 25-CA-10936-1, 25-CA-10936-2, 25-CA-10984, 25-CA-11051, 25-CA-11317, 25-CA-11367, 25-RC-7174, and 25-CA-11989

June 28, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On December 2, 1980, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, the Charging Party filed cross-exceptions, a supporting brief, and an answering brief in opposition to Respondent's exceptions, and Respondent filed an answering brief to the cross-exceptions filed by the General Counsel and the Charging Party.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

1. Based on credited testimony, the Administrative Law Judge found that during the critical preelection period in mid-April 1979[3] statutory Supervisor Art Fletcher initiated a conversation with employee Oscar Branson at Branson's work area. Branson was wearing a pencilholder bearing the Union's logo. Fletcher asked Branson why was he wearing the pencilholder and whether "the Company had done anything to offend him." During the ensuing conversation Fletcher stated that he was "not supposed to be talking . . . at all about this" and Branson stated his opinion that he thought "it is a man's right to vote any way he wants."

The complaint alleges that the above conversation constituted an interrogation in violation of Section 8(a)(1). The Administrative Law Judge dismissed the allegation based on his conclusion that the incident did not rise to the level of a proscribed interrogation because Branson had openly manifested support of the Union, the conversation was isolated and friendly in nature, and it occurred in circumstances lacking any suggestion of harassment. In his analysis, the Administrative Law Judge cited *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*,[4] but opined that our holding in that case does not extend to "a single apparently spontaneous inquiry in a friendly discussion, not shown to be linked to a broader pattern of interrogation." We disagree.

In *PPG Industries, Inc.*, the Board held that inquiries of the kind here in dispute convey an employer's displeasure with employees' union activity and that the coercive impact is not diminished by the employees' open support of the union or by the absence of attendant threats.[5] This holding controls the result here, particularly since we find, contrary to the Administrative Law Judge, that the conversation was not isolated but must be viewed in context with Respondent's other 8(a)(1) violations. Accordingly, we conclude that Fletcher's questioning of Branson regarding his support of the Union reasonably tended to coerce him in the exercise of his Section 7 rights, and that Respondent thereby violated Section 8(a)(1) of the Act.

2. We agree with the Administrative Law Judge's conclusion that Respondent unlawfully discharged Joma Stewart on April 26 because of her protected concerted activities and that the reasons proffered by Respondent for her discharge were pretextual. The General Counsel has excepted to the Administrative Law Judge's failure to find that Respondent additionally violated Section 8(a)(3) and (1) when it transferred Stewart from the day to the night shift on April 9. We agree with the General Counsel.

As found by the Administrative Law Judge and discussed more fully in his Decision, Respondent's

[1] The General Counsel, Respondent, and the Charging Party have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We agree with the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) by threatening employees with loss of jobs in predicting the consequences of unionization during preelection captive audience speeches and in written campaign material. In reaching this conclusion, we do not rely on the Administrative Law Judge's reference to high employee turnover and any potential impact of Respondent's economic predictions on prospective employees. Rather, we agree with and rely on the Administrative Law Judge's conclusion that Respondent's prediction of job loss was not justified by objective and demonstrable economic facts outside Respondent's control.

[3] All dates hereafter are 1979.

[4] 251 NLRB 1146 (1980).

[5] See also *Anaconda Co.—Wire and Cable Div.*, 241 NLRB 1091 (1979); *Paceco, a Division of Fruehauf Corporation*, 237 NLRB 399 (1978); and *ITT Automotive Electrical Products Division*, 231 NLRB 878 (1977).

president, Kenneth Freed, admittedly learned of Stewart's union sympathies on April 9, and, on the same date, asked Stewart's father, a long-term employee of Respondent, to attempt to persuade his daughter to abandon her support of the Union. Later that day, Freed again contacted Stewart's father and told him that he need not speak with his daughter because Respondent was "going to try another tact [sic]." Still later that day, Stewart's supervisor, Harold McBride, informed Stewart that a new night shift was being created in the Gamma Ray Department where she worked as an assistant radiographer, and that she would be scheduled to staff the new shift alone. Stewart, who had never worked without supervision, stated that she would prefer to remain on the day shift. On April 11, however, she began working alone on the night shift. Stewart thereafter experienced much difficulty in her job and became extremely upset. On April 25, Stewart wrote McBride a note in which she enumerated the various problems she had experienced working the night shift and requested a transfer to her old shift, another job, or termination. Respondent terminated Stewart the next day, allegedly in order to "avoid confusion."

In reaching his conclusion that Respondent orchestrated Stewart's discharge because she supported the Union, the Administrative Law Judge found that Respondent's transfer of Stewart to the night shift on April 11 was the "tact" to which Freed had earlier referred. We agree. Prior to Respondent's institution of the night shift on April 11, Respondent's Gamma Ray Department had operated with only a day shift for 17 years. There is some question as to whether Stewart was even licensed to work without supervision. Against this background, Respondent's precipitous action in establishing an unprecedented night shift, immediately after gaining knowledge of Stewart's union activities, and its expressed intent to dissuade her from unionism, warrant finding that Respondent transferred Stewart to the night shift in retaliation for her protected activities. We conclude that this discriminatory transfer constituted a separate violation of Section 8(a)(3) and (1).[6]

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for paragraphs 3 and 4 of the Administrative Law Judge's Conclusions of Law:

"3. Respondent independently violated Section 8(a)(1) of the Act by threatening employees with layoff, by threatening employees with job loss if they designated a union or engaged in a strike, by advising employees to turn in union buttons to foremen if they decide no longer to support the Union, by denying employees access to the plant during their off-duty hours to engage in union activity in nonworking areas, by impeding employees in the exercise of their right to engage in the distribution of union literature on nonworking time, in nonworking areas, and by coercively interrogating employees regarding their union sympathies.

"4. Respondent violated Section 8(a)(1) and (3) of the Act by discharging Inez Tornquist and Debra Tornquist on May 7, 1979, because they refused to engage in antiunion activity; by transferring Joma Stewart from the day to the night shift on April 11, 1979, and discharging her on April 26, 1979; and by discharging Dan Watkins on September 21, 1979, in reprisal for their union activity."

2. Substitute the following for paragraph 6 of the Administrative Law Judge's Conclusions of Law:

"6. By the conduct described in paragraphs 3 and 5 above, together with the discriminatory transfer and discharge of Joma Stewart, as well as the findings heretofore made with respect to Petitioner's Objections 1, 2, 3, 4, and 7, Respondent engaged in preelection misconduct interfering with the free choice of employees at the election conducted on May 10, 1979."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Harrison Steel Castings Company, Attica, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:[7]

1. Insert the following as paragraph 1(g) and reletter the following paragraphs accordingly:

"(g) Interrogating employees concerning their union activities."

2. Insert the following as paragraph 2(b) and reletter the remaining paragraphs accordingly:

[6] The fact that the transfer of Stewart from the day to the night shift was not specifically alleged as a violation in the complaint is immaterial inasmuch as the issue was fully litigated at the hearing. *S & W Motor Lines, Inc.*, 236 NLRB 938 (1978). Moreover, our finding of this separate violation is necessary to insure Stewart's proper reinstatement to her former day-shift position.

[7] In concluding that a bargaining order and other extraordinary remedies are not appropriate in this case, we do not rely on the Administrative Law Judge's comments concerning the Union's lack of majority status. Rather, we find that Respondent's conduct did not rise to a level which warrants extraordinary remedial action.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein

"(b) Expunge from its files any reference to the transfer of Joma Stewart on April 11, 1979, and to her discharge on April 26, 1979; to the discharge of Inez Tornquist and Debra Tornquist on May 7, 1979; and to the discharge of Dan Watkins on September 20, 1979, and notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future action against them."

3. Substitute the attached notice for that of the Administrative Law Judge.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate you concerning your union or other protected concerted activities.

WE WILL NOT deny you access to the plant during your nonduty hours to engage in union activity in nonworking areas, nor will we in any other respect impede your right to distribute union literature on your own time in nonworking areas.

WE WILL NOT make statements to the effect that those who participate in an economic strike, and are replaced, will lose their jobs.

WE WILL NOT threaten that you risk your job or face layoff in the event that you designate a union as your representative.

WE WILL NOT tell you to turn in union buttons or other union insignia to your foreman if you decide you no longer wish to support a union.

WE WILL NOT discharge you, transfer you to other shifts, restrict you to your work area, or deny you overtime because of your support of a union.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights specified at the top of this notice.

WE WILL offer Inez Tornquist, Debra Tornquist, Joma Stewart, and Dan Watkins immediate and full reinstatement to their former positions and, together with Edda Van Laere, Mike Mitton, David Roach, Tom Lambka, and Don Solomon, WE WILL make them whole for any loss of pay they may have suffered by reason of our discrimination against them, with interest.

WE WILL expunge from our files any reference to the transfer of Joma Stewart on April 11, 1979, and to her subsequent discharge on April 26, 1979, to the discharges of Inez Tornquist and Debra Tornquist on May 7, 1979, and to the discharge of Dan Watkins on September 20, 1979, and WE WILL notify them in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future discipline against them.

HARRISON STEEL CASTINGS COMPANY

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This consolidated proceeding originated with the filing of an election petition in Case 25-RC-7174 on April 6, 1979. Thereafter, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on May 10, 1979, among certain employees in the agreed-upon collective-bargaining unit. The tally of ballots showed that, of approximately 895 eligible voters, 1 ballot was void, 390 were cast for, and 418 against representation by the Union, with 73 challenges which were sufficient in number to affect the results of the election. Following timely objections to conduct affecting the results filed on behalf of the Union on January 4, 1980, the Regional Director for Region 25 issued a "Report on Objections to Conduct Affecting Results of Election, Challenged Ballots, Recommendations to the Board, Order Consolidating Cases, Order Directing Hearing, and Notice of Hearing." The Regional Director recommended therein that 5 challenges be overruled, that 7 be sustained, and that the remaining 61 challenges be resolved on the basis of record testimony taken at an evidentiary hearing.[1] With respect to the objections, the

[1] The unresolved challenges included 51 which were raised by the Petitioner. In the course of the instant proceeding, I granted the Petitioner's

Continued

Regional Director recommended that Objection 9 be overruled, and that a hearing be held to resolve the material issues of fact and credibility raised with respect to Objections 1 through 8, inclusive, as well as certain additional conduct involving the alleged unlawful termination of employees Inez and Debra Tornquist.[2]

In the interim, pursuant to an initial unfair labor practice charge in Cases 25-CA-10936-1 and 25-CA-10936-2, and an initial unfair labor practice charge filed by the Charging Party Petitioner in Cases 25-CA-10984 and 25-CA-11051, the Regional Director for Region 25, on July 31, 1979, issued a consolidated complaint alleging that Respondent independently violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity; by threatening reprisals if employees became or remained members of the Union; by promising employees economic benefits to induce them to refrain from union membership; by informing employees through preelection propaganda that designation of a union would result in a curtailment of business and a resulting loss of employment; by informing employees that they could be discharged in the event of a strike; by engaging in surveillance of union activity; and by restricting distribution of union literature on nonwork times. The consolidated complaint further alleges that Respondent violated Section 8(a)(3) and (1) of the Act by, on various dates, terminating 16 employees and by changing the working conditions of 10 specific employees, variously through suspension, reduced employment, confinement to work areas, and the assignment of more arduous work. In its duly filed answer, Respondent denies that any unfair labor practices were committed.

Pursuant to a further unfair labor practice charge filed in Case 25-CA-11317, a complaint was issued on October 12, 1979, alleging that Respondent engaged in additional independent 8(a)(1) violations through coercive interrogation, threats of discharge and other reprisals, and soliciting employees to abandon the Union. The complaint further alleges that Respondent violated Section 8(a)(4), (3), and (1) of the Act by the discharge of Edda Van Laere and Daniel Watkins. In its duly filed answer, Respondent denies that any unfair labor practices were committed.

On January 4, 1980, Cases 25-CA-10936-1, 25-CA-10936-2, 25-CA-10984, 25-CA-11051, 25-CA-11317, 25-CA-11367, and 25-RC-7174 were consolidated for purposes of hearing, ruling, and decision by an administrative law judge.

Finally, on March 17, 1980, a further unfair labor practice charge was filed in Case 25-CA-11989, with a complaint having been issued thereon on April 8, 1980, alleging that Respondent violated Section 8(a)(4), (3), and (1) of the Act by issuing a warning to, imposing a 3-day disciplinary layoff upon, and thereafter discharging Kathy L. Spear because of her union activity. In its duly filed answer, Respondent denies that any unfair labor practices were committed. On April 22, 1980, in the course of the hearing, I granted the General Counsel's request that the aforesaid complaint be consolidated with the aforedescribed pending matter.

Pursuant to the foregoing, a hearing was opened in Attica, Indiana, on January 21, 1980, and conducted before me on various dates in January and April 1980. After close of the hearing, briefs were filed on behalf of the General Counsel, the Charging Party Petitioner, and Respondent Employer.

Upon the entire record in this proceeding, including my opportunity to observe directly the witnesses while testifying and their demeanor, and upon consideration of the post-hearing briefs, I hereby find as follows:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT EMPLOYER

Respondent is an Indiana corporation, with its principal office and place of business in Attica, Indiana, from which it is engaged in the manufacture, sale, and distribution of steel castings and related products. During the 12 months preceding issuance of the initial complaint herein, a representative period, Respondent received at said facility goods and materials valued in excess of $50,000 transported directly from States other than the State of Indiana, and shipped from said facility products valued in excess of $50,000 directly to States other than the State of Indiana.

The complaints allege, the answers admit, and I find that Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaints allege, the answers admit, and I find that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, herein called the Union, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. CASES 25-CA-10936-1 AND -2, 25-CA-10934, 25-CA-11051, 25-CA-11317, 25-CA-11367, AND 25-CA-11989

A. *The Issues*

This proceeding relates to a plethora of unfair labor practices attributed to Respondent through four distinct complaints. It is alleged that Respondent during the critical period preceding the election independently violated Section 8(a)(1) in just about every imaginable form. Furthermore, it is alleged that, during the same period as well as after the election, Respondent engaged in broad-brushed discrimination, including discharges, suspension, reduction in work hours, confining prounion employees to work areas, and curtailing various privileges previously enjoyed by prounion employees.[3] In the main, these issues turn upon critical conflicts in testimony.

motion permitting withdrawal, without prejudice, of the aforesaid challenges.

[2] The Regional Director's recommendations were adopted by the Board by Order dated January 29, 1980.

[3] On April 22, 1980, in the course of the hearing, I granted counsel for the General Counsel's motion to amend the complaint in Case 25-CA-10936-1 by withdrawing allegations that *Michael Tindell, Charles Sanders,* *Continued*

The question of primary remedial concern, apart from backpay and reinstatement, is whether the foregoing allegations are substantiated to an extent warranting action whereby the election, in which, as shall be seen, the Union failed to achieve designation from a majority of the employees, should be set aside, and a rerun election conducted.

B. *Background*

Respondent is engaged in the manufacture of steel castings from its sole facility located in Attica, Indiana. There is no history of collective bargaining for Respondent's blue collar work force, which varies in size, but basically approximates some 1,000 employees.

The instant charges against Respondent stem from an organizational campaign opened by the UAW on March 6, 1979.[4] This, however, was not Respondent's first encounter with such an effort. Since 1947, various labor organizations have endeavored to organize Respondent's production workers through six separate campaigns with National Labor Relations Board elections conducted on some eight prior occasions.

The General Counsel, despite the history of the several organization efforts and the comprehensive nature of the charges leveled herein, does not claim that the instant issues arose against a background of recidivism. Indeed, the only evidence as to Respondent's experience under the Act related to testimony adduced by Respondent to the effect that after said elections, though "almost always" charged with unfair labor practices, it was directed to participate in a rerun election on one occasion and, then, only pursuant to a settlement agreement. As for unfair labor practices, it does not appear that any have been previously sustained against Respondent except a single instance, which was limited to a finding that it violated Section 8(a)(3) in the case of one employee.

C. *Interference, Restraint, and Coercion*

1. Conduct restricting prounion conduct and encouraging antiunion conduct waged on working time in work areas

The original complaints contained a single 8(a)(1) allegation pertaining to distribution, naming Jack Jones, maintenance foreman, as the management representative responsible therefor. Later, three separate allegations were added to the complaints by amendment charging Respondent with having unlawfully restricted the distribution of union literature on nonworking time in nonworking areas, on the one hand, while permitting and encouraging its employees to distribute antiunion insignia during worktime and in work areas. In their final form, the complaints do not charge Respondent with unlawfully impeding employee rights in the area of union solicitation.

As I understand the wealth of evidence addressed to the question of prounion distribution on plant premises, the charges made against Respondent in this connection must be assessed in the light of employee encounters with two individuals; namely, Lillian Sexton, a member of Respondent's security force and an alleged agent thereof, and Jack Jones, foreman in Respondent's maintenance department and an acknowledged supervisor. Issues also exist with respect to an understanding that access by employees to plant premises during their off-duty hours is barred unless the employee can show that he or she has business in the plant. This policy was not memorialized in writing, and it was not published formally or informally on a comprehensive basis at any time during the campaign. Indeed, there is no allegation that Respondent violated Section 8(a)(1) by *promulgating, maintaining,* or *enforcing* a rule or policy imposing a more comprehensive restraint on employee distribution of union literature on nonworking time than the Act permits.

Turning to the evidence, with respect to Sexton, witnesses for the General Counsel testified that on two occasions Sexton impeded employees engaged in the distribution of union handbills, during their off-duty hours, in the vicinity of one of the plant gates. Thus, employee Vernon Spencer testified that on April 10 he together with employee Bluford Brooks and two nonemployee organizers were engaged in the distribution of union literature at a position proximate to the gate serviced by Sexton. As the handbilling progressed, those involved backed closer and closer to company property. As they did so, according to Spencer, Sexton case out of the guardhouse and told him that he could not engage in distribution on the other side of a breach or crack which ran across the pavement in front of the guardhouse. He was told that if he did so he would be engaged in a trespass, and that Sexton would have to call the law. Employee Dan Watkins testified to a similar admonition made by Sexton while Watkins was engaged in the distribution of union literature on or about May 8, in the vicinity of Sexton's guardhouse. Sexton testified that the only conversation she could recall with employees concerning distribution involved Watkins, but that she could not recall a reference to the "crack" in the sidewalk. However, she admitted to having made such a statement to nonemployee organizers.[5] Based on credited testimony of Watkins and Spencer, I find that Sexton addressed them, admonishing that they could not engage in distribution of union literature on the other side of a crack running across the roadway in front of her guard shack.

William R. Bennett, Theodore Farley, and *Stanley Worley* were discharged in violation of Sec. 8(a)(3) and (1) of the Act, as well as allegations that Respondent violated Sec. 8(a)(3) and (1) of the Act by assigning Luis Compos more arduous job tasks, by providing Luis Compos less employment, and by assigning Kathy Spear additional and less agreeable work. In addition, Respondent's unopposed motion to dismiss with respect to allegations that *Mark Shelly* was terminated in violation of Sec. 8(a)(3) and (1) of the Act was granted at that time as no proof was offered in support of that allegation. Along that same line, allegations to the effect that Respondent interrogated and/or threatened employees through conduct of its supervisors, William Trimble and Don Mitton, are dismissed.

[4] Unless otherwise indicated, all dates refer to 1979.

[5] I credit the testimony of Spencer and Watkins in this regard. Sexton lacked a capacity for clear recollection and I was puzzled by the implication in her testimony that she could distinguish between employees and union men. Sexton worked as a guard on the 4-to-12 p.m. shift. She acknowledged that other employees reported to and left work, using other gates, and thus the record warrants the inference that Sexton would have had no contact with substantial segments of the work force.

As Sexton admitted that the crack in question did not in fact divide Respondent's property from that which was public, I find that Sexton, whether or not intended to be in jest, directed employees and nonemployees to refrain from distribution of union literature on public property in an area adjacent to the plant and, as her warnings in this regard were within the scope of her authority as a guard charged with responsibility for maintaining the integrity of Respondent's property, it is concluded that Respondent thereby violated Section 8(a)(1) of the Act.[6]

Additional evidence of alleged impairment of the right of employees to engage in union distribution on nonworking time on company premises appears in testimony pertaining to a confrontation between employee Dan Watkins and his supervisor, Maintenance Foreman Jack Jones. Watkins, as a maintenance electrician, was assigned a regular shift, but worked jobs only on an oncall basis. There were often times when no work was available and Watkins, while on the clock, was simply on downtime. According to Watkins, with respect to such down periods, in a conversation about the Union with Jones, Jones told him variously that Watkins should not be talking to other employees while on the clock. Watkins further testified that in the course of this conversation he asked Jones if it would be permissible for him to come in early, and, before punching in, to distribute literature in the plant. According to Watkins, Jones replied, "Well, no, I prefer that you wouldn't." Jones admitted that Watkins made such an inquiry, but, according to his version, he simply told Watkins that Watkins would not have insurance coverage "if he came in the plant without punching in." I prefer the testimony of Jones over that of Watkins.[7]

With respect to the specific allegation in the complaint that Respondent violated Section 8(a)(1) through Jones' interference with Watkins' right to engage in distribution, I find this allegation to be substantiated by Jones' own testimony.

Respondent justifies this restriction upon an incident in which its insurance carrier questioned coverage of an employee injured on plant property during his off-duty hours. Hence, Jones' statement concerning the distribution of literature during off-duty hours was consistent with Respondent's policy concerning employee access. As I construe his account, the indication that Watkins would not be covered by insurance if he returned during nonduty hours tended to imply that Respondent would have invoked its nonaccess rule with respect to off-shift employees, in connection with such a venture. Though isolated, the response of Jones revitalized Respondent's policy in that regard and hence impels resolution of its legitimacy. I find in the circumstances that the nonaccess rule was unlawful and that Jones' response consistent therewith was of a like stripe.

Respondent freely conceded that said rule was relaxed with respect to those seeking entry for legitimate reasons. According to the testimony of Lillian Sexton, she was never instructed nor informed as to the grounds on which such employees would be permitted into the plant during their nonduty hours. Believed testimony on this record indicates that employees gained access during their off-duty hours for personal convenience unrelated to any business interest of Respondent.

With respect to employer efforts to insulate plant property from visitation by off-duty employees, the Board in *GTE Lenkurt, Incorporated*, 204 NLRB 921 (1973), held that a restriction denying such access to the premises is presumptively valid if not disparately applied against union activity. The Board majority in that case concluded that employees are to be viewed as having the status of nonemployees for purposes of determining the validity of a nondiscriminatory no-access rule and hence such rules would be upheld absent a showing by the Union that no adequate alternate means of communication is available. However, in *Tri-County Medical Center, Inc.*, 222 NLRB 1089 (1976), the permissive scope of *GTE Lenkurt* was narrowed, wherein the Board stated:

> The holding of *GTE Lenkurt* must be narrowly construed to prevent undue interference with the rights of employees under Section 7 of the Act freely to communicate their interest in union activity to those who work on different shifts. . . . We conclude, in order to effectuate the policies of the Act, that such a rule is valid only if it (1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty

[6] I find, contrary to Respondent, that the record adequately substantiates the General Counsel's claim that, for the purpose of the above unfair labor practice, Sexton was an agent of Respondent and that her conduct was binding upon Respondent. In this regard, while I would agree with Respondent's observation that the fact that one is a guard or plant security representative does not establish agency, *per se*, for all purposes, the action on the part of Sexton complained of here was plainly within her entrusted apparent authority to prevent intrusion on Respondent's property. The record attests to the fact that Sexton as a guard at a gate maintained by Respondent was responsible for assuring that access to company property be confined to persons having business thereon. She received instructions to that effect, and acknowledged that her duties included the exercise of discretion as to whether company policies would be complied with were she to admit those seeking entrance to company property. Although Sexton, according to her testimony, was not instructed specifically as to her proper role in handling employees and nonemployee organizers engaged in union activity, the authority otherwise placed in her, the location and means by which she exercised her authority with respect to the protection of plant property against trespass would naturally be taken as possessed of the imprimatcur of Respondent. At a minimum, I find that she was clothed with apparent authority to restrict access of all who would enter company premises and that her comments to organizers were within the scope of that authority. Cases cited by Respondent, namely, *Cabot Corporation and Payne and Keller of Louisiana, Inc.*, 223 NLRB 1388 (1976), and *Bibb Manufacturing Company*, 82 NLRB 338 (1949), are distinguishable, and on the instant facts warrant no different result. See, e.g., *Coors Container Company*, 238 NLRB 1312 (1978).

[7] Jones, though admitting to a hazy recollection as to specifics, impressed me as being basically honest. I believed Jones' testimony that he admonished Watkins only with respect to his approaching fellow employees to discuss the Union while the others were working. Watkins' testimony that Jones went beyond this, permitting him to talk union to machine shop personnel, but otherwise broadly restricted him with respect to other employees seemed improbable. Watkins was considered prone to exaggerate and reflected a propensity to afford testimony reflective of self-serving facts beyond his knowledge to further his own and the cause of the Union in this proceeding. I have not accepted his testimony unless either directly or indirectly confirmed through probability or other credible sources. I would note that, notwithstanding the specificity with which this complaint challenges various aspects of Respondent's conduct, there is no allegation naming Jones, any other supervisor, or Respondent generally as having impeded union *solicitation*.

> employees seeking access to the plant for any purpose and not just to those employees engaging in union activity. Finally, except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid.

Here, it does not appear that the scope of the rule was ever formally communicated to employees. And the record amply discloses that the rule did not apply to those seeking access for all purposes, with exceptions to the ban being undefined and freely conferred.[8] For example, plant guard Lillian Sexton testified that entry during off-duty hours was simply left to the discretion of plant security personnel at the gates.[9] Furthermore, the implication in Jones' response to Watkins herein was unqualified as to geographic scope and hence could be construed as controlling with respect to all of the "plant," including areas immediately adjacent to the "gates." In agreement with the General Counsel, I find that Respondent has failed to furnish a legitimate business justification for preempting union activity within such nonworking areas.[10] Accordingly, the nonaccess policy involved here did not meet the standards of legitimacy set forth in *Tri-County Medical Center, supra*. Based on the foregoing, I find that Jones, by referring to Respondent's nonaccess policy, albeit in a friendly conversation, in which he might well have expressed a lack of certainty as to the legitimate scope of Respondent's restrictions upon union activity, did on balance, at least by implication, communicate a restriction violative of Section 8(a)(1) of the Act.

In contrast with the foregoing, the complaint also alleges that Respondent violated Section 8(a)(1) by its having "discriminatorily permitted and encouraged its employees to distribute anti-union insignia during work time and work areas." In support of the foregoing, counsel for the General Counsel adduced testimony that four employees, Betty Holloway, Donna Tiger, Tim Holoman, and Valerie Bullington, distributed antiunion paraphernalia to fellow employees in working areas during working time. In this regard, there is neither evidence nor claim that any of these employees were supervisors or agents of Respondent. A suggestion does appear that, with respect to two instances, the activity involved was condoned by supervisors. Thus, there was testimony by Landus Waters that he observed Holloway and Tiger distributing "Vote No" stickers on one occasion and that Earl Hornaday, a supervisor, simply smiled as Holloway passed him. Further, both Waters and James Watkins testified that they observed Foreman Dave Lockwood relieve Holoman on his "towmotor" whereupon Holoman proceeded to distribute "Vote No" T-shirts in a working area during working time. Other than the vagaries apparent in the foregoing, there is no evidence whatever that Respondent initiated antiunion activity or that the latter was anything other than a spontaneous effort to broaden the antiunion view held by certain employees. The question presented here is whether the Employer's failure to restrict activity by antiunion employees on working time and in working areas gives rise to an unfair labor practice. Counsel for the General Counsel cites no precedent that such is the case. Section 7 protects the right of employees to engage in union activity to no greater extent then it protects their right to refrain therefrom. To find an unfair labor practice based on an employer's failure to discipline such antiunion employees might raise grave questions under Section 7 and also with respect to basic employer prerogatives. Precedent fails to reveal an inclination on the Board's part to delve in these areas. While the Board has dealt with an employer's knowing condonation of employee distribution of antiunion literature during working time, such inaction was merely deemed a predicate for other unfair labor practices and was not found in itself to have violated Section 8(a)(1). See *Porta Systems Corporation*, 238 NLRB 192 (1978). Accordingly, it is concluded that the Employer's failure to restrict or discipline antiunion employees engaged in antiunion activity during working time impedes to no greater extent Section 7 rights than its own use of working time to communicate antiunion views at captive meetings or through supervisory appeals. I shall dismiss the 8(a)(1) allegations in this regard.[11]

2. The antiunion rally

Sue Ward is a secretary and receptionist in Respondent's personnel department. An antiunion rally was scheduled by certain employees for May 8. Two of the alleged discriminatees herein, Inez and Debra Tornquist, testified that on May 7 Sue Ward visited the desks of various office personnel and approached them individually. Ward told them of the impending company rally and that she was soliciting attendance among the girls in the office because the Union was having a similar rally that day. Both Tornquists testified that Ward carried a note pad and ink pen, and Inez Tornquist testified that she ob-

[8] Kenneth Freed, Respondent's president, testified that the restriction was administered with leniency.

[9] Note that the testimony of Kenny Freed conflicted with that of Sexton. Freed testified that passes were issued to those seeking access on off-duty hours by someone in authority in "the office." If that was the intended policy, it apparently was neither conveyed nor followed by Sexton. As a plant guard, primary responsibility for enforcement of the policy would rest with Sexton and other similarly situated security personnel.

[10] The sole testimony as to the basic justification for the policy was that of Freed to the effect that some 20 years ago an employee who was off duty returned to the plant premises and was injured. The Company filed a claim with its liability insurance carrier and, although Freed acknowledged that the claim was accepted, he went on to relate that "the insurance company kinda frowned on the fact that the employees not working . . . were permitted to come back to the plant at will." Such considerations do not warrant the impediment to Sec. 7 rights of employees involved here. The fact that access of nonworking persons increases potential liability proves too much, and lacks the speciality requisite to a relaxation of Sec. 7. Respondent's basic justification would afford a universal intrusion upon such employee rights, for, it is difficult to conceive of an industrial plant or facility which would not sustain enhanced potential for liability when any person enters its property.

[11] It is not entirely clear from the post-hearing brief filed on behalf of the General Counsel that this pattern of conduct remains a viable issue. However, since the General Counsel does not specifically indicate that the matter be dropped from the complaint, it has been resolved on the merits. In addition, there is no evidence that the distribution of antiunion materials was accomplished as a means by which Respondent's supervisors or agents sought to gain knowledge of employee sentiment. Any alleged 8(a)(1) violation based on such a theory is dismissed to that extent.

served Ward making entries as she passed from desk to desk.

Ward acknowledged that she asked all the girls in the office if they would like to participate and claims that she possessed a list so that she would not omit any of the office personnel in the course of her endeavor. Although she denied that a list was prepared as to who would and would not attend, she somewhat reluctantly conceded that later she informed Robert Blickenstaff, Respondent's office manager, as to those who did not attend.[12]

Whatever the nature of her conduct, Respondent strenuously argues that Ward was neither a supervisor nor an agent whose conduct could be binding upon it. There is merit in this view. Ward was simply a rank-and-file member of Respondent's office staff, who was antiunion, and who endeavored to enlist support of her coworkers in an antiunion demonstration which was not shown by credible primary evidence to have been inspired or initiated by Respondent.[13] It is my conclusion that the evidence fails to establish that Ward was a supervisor or agent and hence her conduct in connection with the rally could not be attributed to Respondent. Accordingly, the 8(a)(1) allegations based on polling and management's encouragement of antiunion activity insofar as based on the foregoing shall be dismissed.

3. The Employer's campaign propaganda

The complaint alleges that Respondent in communicating its antiunion views violated Section 8(a)(1) through implied threats that employees could be discharged in the event of a strike and that designation of a union would "cause a curtailment of the employer's business and resulting loss of employment for its employees."

Shortly before the May 10 election, Respondent distributed an edition of its newsletter, which was entitled "Election Special" and included, among the points made, the following:[14]

> If you would be called out on strike by the Union during contract negotiations, such a strike is called an "economic" strike and all employees not reporting to work can be PERMANENTLY REPLACED. A company cannot fire employees for striking but it can "permanently replace" them. Permanent replacements hired for strikers are allowed by law to keep the striker's job even after the strike ends. Thus, employees who go on strike and are replaced have no job to return to when the strike ends.

The General Counsel contends that the foregoing constituted a "misstatement" of employee rights as economic strikers, and hence violated Section 8(a)(1) of the Act. In this connection, the General Counsel correctly observes that, under Board policy, employer propaganda with respect to the rights of strikers is carefully screened and those who would embark upon such discourse are charged with the obligation to do so with accuracy. It is well settled by virtue of *The Laidlaw Corporation*, 171 NLRB 1366 (1968), that permanently replaced economic strikers neither lose their right to reinstatement nor status as employees upon termination of the strike, but must be recalled as vacancies occur during the ensuing indefinite future, absent substantial business justification.

Here, the statement published by Respondent argues that those replaced when the strike ends will have "no job to return to when the strike ends," a reference expressed in terms conveying that, upon such eventuality, the economic strikers will face termination, cutting off all further rights. At best, from Respondent's point of view, the reference was ambiguous. But as I understand Board precedent, Respondent, having raised the issue, was obligated to clearly articulate the continuing rights of the strikers to reinstatement as well as their continuing status as employees. Here, Respondent's explanation of the rights of strikers was presented in a context of antiunion propaganda calculated to convey the risks assumed in union activity. I am convinced that Respondent, in discussing its own prerogatives, created an ambiguity, which could lead employees reasonably to assume that they risked termination if they participated in and were replaced at the conclusion of an economic strike. As such, Respondent's statement carried an implied threat of discharge, was not protected by Section 8(c) of the Act, and violated Section 8(a)(1).[15]

With respect to the alleged threat of job loss, counsel for the General Counsel apparently relies both on documentation and campaign utterances of "Bus" Shoaf, Respondent's chairman of the board, during captive audience meetings with employees during the period preceding the election. Thus, an article appearing in the above-described newsletter recited as follows:

> Some of Harrison Steel Castings Company's competitors are nonunion and some are located in the southern part of the United States where wage rates are traditionally lower, and if we become union the Company may become noncompetitive with a re-

[12] It is entirely possible that Ward may have been mistaken as to whom this disclosure was made. Blickenstaff testified that Ward did not identify those attending or those not attending. On the other hand, "Rusty" Harrison, Respondent's secretary-treasurer, testified that Ward identified this group to him.

[13] The General Counsel in support of the claim that Ward was authorized to conduct a poll cites testimony of the Tornquists that Ward told them that she was instructed to conduct the inquiry. However, even disregarding the hearsay nature of such testimony, the Tornquists do not disclose that Ward identified the source of any such "instruction" and to speculate that it originated with a management representative is no more warranted than a conclusion that she was asked to do this by employee sponsors of the rally.

[14] See G.C. Exh. 5(b).

[15] See, e.g., *Olympic Medical Corporation*, 236 NLRB 1117, 1123 (1978); *Laredo Coca Cola Bottling Company*, 241 NLRB 310 (1979). Cf. *Mississippi Extended Care Center, Inc., d/b/a Care Inn, Collierville*, 202 NLRB 1065 (1973), where the Board dismissed an 8(a)(1) allegation in circumstances where the employer informed employees of its "absolute right to permanently replace each and every striker." Although that reference, as here, included no allusion to the *Laidlaw* rights of strikers, the employer's remarks in *Care Inn* mentioned permanent replacement only otherwise omitting reference to risk of job loss or termination. The vice in Respondent's propaganda herein is the failure to refer to *Laidlaw* guarantees in the context of a statement in which employees were informed that they would have "no job to return to when the strike ends," a reference which, whether simply a byproduct of inartful draftmanship or by design, was subject to an interpretation of final job elimination without resurrection as vacancies occur during the poststrike period.

> sulting loss of business and jobs. This loss of business could come about through increased cost of operation, not due to wage or benefit increases to employees but rather due to the inherent increased cost in operating a union plant. At union companies much time is spent on grievance processing, contract negotiations, and dealing with the Union, which add to the cost of operation, but do not put any benefits in the employee's pocket.
>
> * * * * *
>
> In a union company there is the ever present possibility of a strike. Our customers rely upon dependable delivery of goods and services, and the risk of a strike may force our customers into looking for alternative suppliers, which could lead to a loss of jobs at our plant. When you consider your vote for or against a union examine that choice in terms of your own personal best interests rather than what is good for the employer.

In addition, in a letter distributed by the Respondent to employees under date of May 1, the following appears:[16]

> We have heard some talk about strikes where there is a union in a plant. Everyone who reads the papers knows that unions frequently have strikes. The purpose of a strike is to cause production to stop with the result that employees get no paychecks and the customers get no shipments or products. You know that on many of the things we ship to Caterpillar we are Caterpillar's sole source for the casting. Obviously, if a union struck Harrison Steel, our relationship with Caterpillar would suffer. No customer is going to stand by and continue to give exclusive source orders to a supplier who has strikes.
>
> You should give thought to the likelihood of a strike if a union gets in. You should also give thought to the effect of a strike upon our relationship with Caterpillar. If we lost Caterpillar business because we were an unreliable source of supply, employees would lose jobs and the Company and the whole community would suffer.

In addition to the foregoing, the views expressed therein were echoed by Shoaf in captive audience meetings conducted among groups of 30 employees. These sessions were held during the last days of April and the first 3 days of May, prior to the election.[17]

Respondent, by way of defense, observes that the elements of its propaganda under interdict of the instant complaints constituted lawful economic prediction based on objective fact. In this connection, it is noted that Caterpillar Tractor Company is Respondent's principal customer. Some 85 percent of Respondent's output goes to Caterpillar. Kenneth Freed, Shoaf, and Richard Picl, a management representative of Caterpillar Tractor Company, credibly testified to a meeting held in April shortly after the inception of organization activity attended by representatives of Caterpillar and Respondent. That meeting involved a regular periodic review of Respondent's operation and the ongoing relationship between the two firms, and it was in the course thereof that Respondent informed Caterpillar representatives of the pending organization drive. Picl apprised Freed and Shoaf that if organized a substantial difference would exist in the manner in which Caterpillar did business with Respondent. He pointed out that Caterpillar maintains certain standard practices with respect to its organized employers, including stockpiling requirements[18] and the use of duplicate patterns.[19]

During the captive speeches, Shoaf informed the employees that the marketability of Respondent's castings was based on three factors: price, quality, and delivery. He noted that Respondent maintained a good reputation for delivery and that its history was free of work disruption or strike. With respect to price, Shoaf observed that under a union contract prices would necessarily be increased: in view of the cost of maintaining restrictive work rules, the need to hire attorneys, the cost of bargaining, and the cost of a complicated grievance procedure. He indicated that there was a possibility that quality might suffer in that with union representation a wedge might be driven between management, which had been developed from within the ranks, and the workers. Shoaf argued that Respondent's open door policy was more advantageous to employees than the complex grievance system under a union contract. Shoaf closed by saying that the employees would be making a mistake by gambling their future on union promises, that the Company got along pretty well in the past without a union, and that the Union was simply after the money of the employees.

Shoaf acknowledged that, in delivering these speeches, he held the opinion that Caterpillar work would be lost if the Union won the election. Although there is no indication in Shoaf's testimony to this effect, Freed testified that Shoaf mentioned or at least implied that there was a possibility that a loss of jobs and loss of work could result due to a decline in the competitive posture of the Company if a union were designated.

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[16] See G.C. Exh. 5(a).

[17] Where conflict exists, I regard the testimony of Freed and Shoaf as to what was said on those occasions as more reliable than that afforded by the General Counsel's witnesses, noting that the latters' testimony afforded only minor, if not immaterial, differences.

[18] Apparently, under Caterpillar's established practice, union suppliers are required to produce a 1- to 3-month inventory within the 4- to 6-month period preceding expiration of existing collective-bargaining agreements. Of course, if a strike were averted the stockpile created in anticipation thereof would necessarily be absorbed as against future orders, with a corresponding cut in production. The stockpiling requirement was not compatible with Respondent's output capability. Thus, Shoaf explained that the Company traditionally produced at 100 percent of capacity to meet regular delivery commitments, and, hence, the stockpiling requirement would impose demands on Respondent's productive capacity which could not be met unless day-to-day output levels were reduced below 100 percent.

[19] With respect to duplicate patterns, Picl informed that those patterns held on exclusive basis by Respondent would be placed in plants of competitors. This meant that some orders would be drawn away from Respondent and placed with the holder of the duplicate to defray the competitor's cost of maintaining a production capacity with respect to such patterns.

On the credible facts, the issue turns on whether Respondent's threat of job loss in its campaign propaganda violated Section 8(a)(1). Said references were not shown to have been expressed with any degree of definiteness, but only in terms of the possible. They were justified on the basis of a combination of logical argument and objective fact. The references to the increase cost of administering a collective-bargaining agreement and the impact thereof on price structures was not lacking in realistic foundation. At the same time, the credited evidence as to Caterpillar's established practices with respect to union suppliers, with respect to duplicate patterns and stockpiling, were demonstrable facts, offering strong suggestion that Respondent would not be in a position to furnish its principal customer tonnage at the same levels as existed prior to union organization.

Nonetheless, the employer's right pursuant to Section 8(c) of the Act to refer to the possibility of job dislocation as a result of unionization has been narrowly circumscribed. In *N.L.R.B.* v. *Gissel Packing Co., Inc., et al.*, 395 U.S. 575 (1969), such references are permissible so long as:

> . . . carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . . . If there is any implication that an employer may or may not take action solely on his initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion. . . . [395 U.S. at 618.]

The Court went on to indicate that:

> . . . the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact, unless, which is most improbable, the eventuality of closing is capable of proof. [395 U.S. at 618-619]

Consistent with the foregoing, the Board has acknowledged "the Employer's right to discuss freely and frankly its views concerning unions, strikes, collective bargaining, plant closure, and any other topics it considers important." At the same time, however, this right must be balanced against that of employees "to associate freely and to express their desires in an atmosphere free from fear and futility."[20]

These principles focus upon the question of whether the entirety of a campaign material conveyed to the employees, either directly or by implication, that Respondent held an inclination or propensity beyond economic necessity to bring about the very adverse consequences referred to.[21] Such an interpretation is not dispelled on the face of the propaganda under consideration herein. The reference to a possible loss of jobs was offered in a context under circumstances suggesting that incumbent employees could lose work were they to designate the Union. Yet, such an insinuation was not justified by demonstrable economic fact. While I have no quarrel with the logic of Respondent's argumentation that collective bargaining costs money and that Caterpillar's practice with respect to union suppliers could well result in less tonnage, neither, considered separately nor in combination, persuasively supported the implication that those whose choice it was in the impending election would bear the consequences. Respondent's profitability is an admitted fact. In the years 1978 and 1979, it is a fair estimate that turnover in its work force ranged between 60–90 percent annually.[22] At best, Respondent's argumentation would support prospective shrinkage in the overall job force, and, in the light of Respondent's turnover history, that burden would fall on future job seekers. Thus, by attempting to impress incumbent employees with a possibility of job loss, Respondent went beyond demonstrable fact to influence rejection of the Union on job security issues constituting no threat to them, unless, that is, Respondent elected to take discretionary action in the form of reprisal. In sum, while the supporting argumentation logically pointed to the possibility of impaired earnings and even perhaps an ultimate reduction in job opportunity for future applicants, no assumption is warranted that those to whom the propaganda was addressed had direct cause for alarm either through increased costs due to collective bargaining, the policies of Caterpillar pertaining to union suppliers, or other arguments raised on objective fact. On balance, I find that the references to possible job loss implied that those voting in the election were on the verge of assuming a risk which was not substantiated by "demonstrably probable consequences beyond . . . [Respondent's] control." Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act. See, e.g., *Ludwig Motor Corp.*, 222 NLRB 635, 636 (1976); *Jamaica Towing, Inc.*, 236 NLRB 1700 (1978).

4. Conduct attributed to alleged or admitted supervisors

a. *By John Grammar*

The complaint alleges that on Sunday, May 6, John Grammar engaged in surveillance of a union meeting conducted at the Lion's Club building in a recreational park within the township of Attica. Grammar was identified by employee witnesses for the General Counsel, Dan Watkins, David Roach, and Tom Lambka, as having been observed driving a pickup truck during the union meeting, slowly passing the Lion's Club several times. Grammar testified that Ravine Park was within his regular route between the plant and his residence, and that he drove past the Lion's Club building at least four times daily, including twice during his lunch break. As Grammar could not recall observing an occasion on which cars were parked outside the Lion's Club in a manner suggesting a meeting, he in effect denied that he

[20] See *W. A. Krueger Co.*, 224 NLRB 1066, 1069 (1976).

[21] See *W. A. Krueger Co., supra* at 1069; *Hanover House Industries*, 233 NLRB 164 (1977); and *Mohawk Bedding Co., Inc.*, 216 NLRB 126, 128 (1975).

[22] According to Resp. Exh. 11, 904 employees were terminated through discharge, quit, or retired. Resp. Exh. 12 shows that 904 employees left the Company's employ for those reasons.

at any time engaged in the surveillance complained of herein.

The conflict need not be resolved, for merit is found in Respondent's contention that Grammar was neither a supervisor nor an agent. At the time of the incident in question, Grammar was employed as an instructor in Respondent's welding school. There is no evidence that, in such capacity, Grammar possessed or exercised any indicia of supervisory authority. Although he wore a white hat, as did Respondent's other supervisors, credible testimony existed to the effect that rank-and-file employees also wore white hats, and it does not appear that Respondent enforced any requirement that members of the work force honor any such color code. Accordingly, I find that the General Counsel has failed to establish by a preponderance of the evidence that Respondent violated Section 8(a)(1) on the basis of Grammar's alleged conduct.

b. *By Lawrence Pearson*

Pearson, an admitted supervisor, was foreman of the so-called pep set crew, a group of employees who worked in the south coreroom. Certain members of his crew, namely, Lambka, Van Laere, and Roach, attended a union meeting on Saturday, April 7, held at the Williamsport Fair grounds. Apparently on that occasion union buttons were distributed. On April 9, Mitton, also a member of the pep set crew, joined Van Laere, Lambka, and Roach, who wore union buttons to work. Testimony adduced on behalf of the General Counsel is to the effect that Pearson, in two separate incidents, first, while dining with Van Laere and her husband, and again at the work area, told the Van Laeres, Lambka, and Roach that, if he were in their shoes, he would not display prounion support because, if the Union got in, no matter how long it took, Respondent would eliminate the prounion employees at the first opportunity.[23] Based on the credited testimony that such a statement was made, even assuming that it was made among friends and in the form of an opinion held by Pearson, it nonetheless was a coercive declaration by an acknowledged supervisor who professed to speak from knowledge gained in the past. As such, the statement violated Section 8(a)(1). I so find.

c. *Art Fletcher*

Fletcher was Respondent's chief inspector. The complaint alleges that Respondent violated Section 8(a)(1) by Fletcher's having engaged in coercive interrogation as well as his having promised economic benefits to induce the employees to refrain from becoming or remaining members of the Union. With respect to the promise of benefits, the matter is not briefed by the General Counsel, and my own independent review of the record discloses no evidence that Fletcher made any remarks subject to any such construction. This 8(a)(1) allegation shall be dismissed.

The allegation of interrogation relates to a confrontation between Fletcher and employee Oscar Branson. Apparently, in mid-April, Branson, while working, wore a pencilholder bearing a UAW insignia. Fletcher approached him, and, according to Branson, asked why the latter wore the pencilholder. According to Fletcher, who admits to the incident, he simply asked Branson whether "the Company had done anything to offend him." The conversation ended when Branson indicated that it was his privilege to wear union insignia, and expressed that he was tired of people asking him about the Union in one fashion or another. Branson admitted that Fletcher told him that he did not blame Branson for supporting the Union because he "would want to know what was going on too." According to Branson, after Fletcher indicated that he was "not suppose to be talking . . . at all about this," Branson injected, "I think it is a man's right to vote any way he wants." Fletcher testified, and there is no indication otherwise, that this was the only conversation he had with Branson concerning the Union. Branson described his relationship with Fletcher as friendly.[24]

There is no question that, in many instances, inquiry as to the reasons for union support provide a means by which management representatives discern employee sympathy and hence constitutes unlawful interrogation. That rationale for finding an 8(a)(1) violation in this instance fails to apply. Where, as here, the employee involved has openly manifested union support and the incident is isolated, occurs in a friendly context, and under circumstances lacking any suggestion of harassment, I can think of no conceivable, unprivileged ground for concluding that a supervisor had exceeded statutory bounds by so trival an act. While I am bound to follow Board precedent, and have not overlooked the recent decision in *PPG Industries, Lexington Plant, Fiber Glass Division*, 251 NLRB 1146 (1980), that holding is not viewed by me to reach a single apparently spontaneous inquiry in a friendly discussion, not shown to be linked to a broader pattern of interrogation. I find that Fletcher's inquiry did not in the particular circumstances involved amount to proscribed interrogation and the 8(a)(1) allegation based thereon shall be dismissed.[25]

d. *By Robert Crawford*

Crawford, as Respondent's employment director, is entrusted with primary responsibility for all hiring. Apparently, prior to the election the brother of Oscar Branson, Alonzo Branson, Jr., was seeking work in the Attica area. Ethel Branson, Oscar's wife, accompanied Alonzo Branson to Crawford's office for that purpose just before the election. According to her testimony, as Alonzo completed an application, Crawford indicated that Respondent was not hiring at the time. However, when

[23] Pearson, who denied making any such statement, obviously had a limited capacity for recall. I prefer the more persuasive testimony in this respect of Edda Van Laere and Lambka.

[24] It was my impression that Branson's description of this conversation on direct examination by the General Counsel tended to portray the event as more fractious than what actually transpired. I prefer the facts elicited on cross-examination by counsel for Respondent, as well as the version offered by Fletcher.

[25] See *Federal Paper Board Company, Inc.*, 206 NLRB 681 (1973); cf. *ITT Automotive Electrical Products Division*, 231 NLRB 878 (1977).

Ethel Branson indicated that she had previously talked to Kenny Freed, who advised her to bring Alonzo in to fill out an application, Crawford repeated that they were not hiring, but added that "[i]f Oscar would go along with us, we know [sic] more about what to do with his brother."

Crawford acknowledged that Alonzo Branson, in the company of Ethel Branson, appeared at his office and completed an employment application, but he claimed that he simply told Alonzo Branson that the Company was not hiring and that Branson should check back occasionally to see if an opening existed. Crawford denied that anything was said concerning the outcome of the election, or that Alonzo Branson's job opportunity depended on his brother's position concerning the Union.

I prefer the testimony of Crawford. Although Ethel Branson may well have suspected or held the view that her brother-in-law's job opportunities may have been influenced by her husband's support of the Union, I did not believe that any such possibility was communicated by Crawford. Accordingly, I find the General Counsel's assertion that Crawford made any statements violative of Section 8(a)(1) to be unsubstantiated by credible proof.

e. *By David Lockwood*

An allegation which imputes a threat to Lockwood, a foreman and an admitted supervisor, was substantiated by employees Landus, Waters, and James Watkins, finishers in Respondent's south foundry. According to their testimony, in mid-April as they were discussing the long hours they had been required to work and the fact that things might be different if the Union were victorious, Lockwood walked by, and, apparently having overheard the conversation, interjected, "You'd better get all the time you can in, if it goes in, we may all be laid off." Lockwood was not called by Respondent and the testimony of the witnesses offered by counsel for the General Counsel stands uncontradicted. Based thereon, I find that such a statement by an acknowledged supervisor constituted a coercive threat of reprisal violative of Section 8(a)(1) of the Act.

f. *By Tom Gustus*

The complaint alleges that Respondent violated the Act on the basis of a threat of unspecified reprisal by Gustus. The evidence offered in substantiation of this allegation was offered through James Watkins, who testified that Gustus approached him toward the end of April, tore a union button from his jacket, and stated, "You are not allowed to wear them down here." Watkins admonished Gustus that, if he were ever to do that again, Watkins would "bust" him in the nose, whereupon Gustus removed himself from the scene.

Apart from denying that Gustus' conduct was unlawful, Respondent argues that it was not binding on Respondent. There is merit in this assertion. At times material to the instant allegation, Gustus was a mold finisher on a "jolt machine" in the south foundry. The south foundry was under the general supervision of Earl Hornaday, the general foreman. There were two foreman under Hornaday, Bill Kirkman and Dave Lockwood, who were responsible for directing the three jolt machine crews of 11 men, each in the south foundry. Each jolt machine is operated by a crew, including five mold finishers, with two mold finishers "A," two mold finishers "B," and one helper. Gustus was a mold finisher "A," the highest rated classification on the jolt machine. His crew included Eddie Whitehead, who occupied the same position as Gustus. I am not convinced that either Gustus or Whitehead, or others similarly situated, possessed supervisory authority in connection with the other eight members of the jolt machine crew. They worked with the crew to assure that a quality mold was produced, and shared in the piece rate incentive available on a group basis if the entire crew's output exceeded established production standards. There is no evidence that either possessed or exercised classic indicia of supervisory authority. In my opinion, their responsibility for a quality product, together with the fact that Gustus completed timecards for the entire crew, a function which on this record was viewed as no more than ministerial, involved no independent discretion.[26] This, together with the fact that they trained new employees, in my opinion, shows no more than that Gustus was a nonsupervisory leadman, who worked with other lower rated finishers regularly, and who served his Employer as an experienced employee only directing the work to the extent that his years of experience reduced that function to the routine. Accordingly, I find that the General Counsel has not established that Gustus was a supervisor or agent, and hence any misconduct on his part was not attributable to Respondent. The 8(a)(1) violation based thereon shall be dismissed.

g. *By Tom Campbell*

Tom Campbell was the first-shift foreman in charge of maintenance. The complaint charges that Respondent violated 8(a)(1) through Campbell's unlawful questioning of maintenance electrician Dan Watkins and by creating the impression that Watkins' union activity was subject to surveillance. The evidence in this respect shows that Watkins, Tom Campbell, and the latter's brother, Grant Campbell, also a maintenance electrician, frequently, and on a informal basis, drank coffee during the early morning hours on a regular basis, discussing various events, including the Union. At the end of one such conversation on April 7, according to the testimony of Dan Watkins, Tom Campbell asked the former if he had planned to attend the union meeting that day. Watkins responded in the affirmative. The following Monday, Watkins was asked by Tom Campbell if he had in fact attended the meeting. Watkins indicated that he had, whereupon

[26] I discredit the testimony of James Watkins that the mold finisher "A" had the right under any circumstances to determine which members of a crew were eligible to participate in piece rates or had any authority to otherwise effect earnings. I also find that those occupying the classification head finisher or mold finisher "A" were not empowered to effect transfers between machines, or within a machine. I find that, in the event of a vacancy within a crew, the manning was the responsibility of front-line supervision, and that, in the event that it was determined that a machine would be operated short, the men would simply move up with no independent discretion exercised by any member of the crew in connection with their utilization.

Campbell indicated that he had heard that the Union had promised employees a $2-an-hour increase were it to win the election.

Watkins also testified to a conversation in late April with Campbell wherein Watkins was expressing second thoughts concerning his union support. According to Watkins, in the course of that conversation, Campbell indicated that the Company knew all it needed to know about Watkins' union activity. Watkins claimed to have sought clarification, whereupon Campbell responded, "Well, we know that you were up at Wheeler's Restaurant and met the UAW people. . . . And then after that meeting . . . you went up to the Short Stop Restaurant and you were there until almost till the time that they closed."

Watkins was the initial contact, and one of the chief protagonists, of the Union. At the time of this incident, he had openly manifested his support of the Union. He conceded that conversations of this type were held on an almost daily basis, that the pros and cons of the Union were discussed often, and that the union references were often initiated by himself. He admitted to a cordial relationship with Campbell and that at times he enjoyed the conversations concerning the Union. Campbell denied ever initiating the subject of the Union during these conversations with Watkins. He claimed that he at no time questioned Watkins as to his intention with respect to union meetings or asked if he had attended. Campbell denied that he had mentioned that the Union was promising a $2 increase, claiming instead that Watkins told him that this was so. Finally, Campbell denied having ever told Watkins that the Company knew all about his union activity, or that the Company knew that Watkins had met with union officials at two bars in Williamsport. I credit Campbell. As heretofore indicated, Dan Watkins was an unpersuasive witness. Accordingly, the credible facts do not substantiate that Watkins was questioned concerning his union activity or that information was brought to his attention by Campbell implying that his or union activity in general was subject to management surveillance. The 8(a)(1) allegations based thereon shall be dismissed.

h. *By Kenny Freed*

As indicated, Freed was Respondent's president. The allegations that Respondent violated Section 8(a)(1) through Freed are based on the uncorroborated testimony of Dan Watkins and relate to a meeting held in late April at the latter's behest. Watkins was one of the first employees, if not the first employee, volunteering to actively campaign for the UAW. He solicited union authorization cards, and on several occasions was engaged in the handbilling of union literature at the plant gates. In late April, according to Watkins' testimony, he informed Tom Campbell that on certain issues he did not agree with the Union. According to Watkins, Campbell asked if he were changing sides, to which Watkins replied, "Well, I really wouldn't say changing sides but I do have my doubts . . . I have my questions . . . the Company has not yet come out with anything dramatic in presenting their view." Watkins went on to state that he wished to hear both sides of the story before making up his mind as to which way to vote. According to Watkins, Campbell then asked if Watkins wished to talk to Kenny Freed, volunteering to set up an appointment if Watkins so wished. According to Watkins, after he indicated that Freed probably would not agree to talk to him, the conversation shifted, whereupon Campbell again told Watkins that he could arrange an appointment with Freed. Watkins claimed that he again turned down the opportunity.

Watkins initially testified that he opened the conversation with Campbell for two reasons: (1) because certain individuals who had manifested union support had been discharged and he was worried about the vote, and (2) because he had read the UAW constitution and had found things that he took offense to. He claims that, after this conversation with Campbell, he thought about what Campbell had said, and, because so many people had been discharged at that time, he decided to call Freed and arrange an appointment.[27] When the meeting took place, Shoaf, at Freed's insistence, also attended. Watkins took the occasion to announce that "this is going to be something of soul cleansing session." He indicated that he possessed the UAW constitution and that he would like to review it and voice his objections to its content. Freed agreed. The page-by-page review of the UAW constitution proceeded, with Watkins indicating areas in which he had reservations. At one point Watkins indicated that he could work with or without a union. Finally, Freed asked Watkins if Freed could present the Company's view on the issue of union representation. Watkins indicated that he would appreciate it, for "the Company hasn't presented their view yet." According to Watkins, Freed indicated, *inter alia*, "We employ about 1,000 employees and we've had several elections in the past . . . it always hurts our business . . . you lose good people over a union campaign . . . it hurts production."[28] According to Watkins, after Freed summarized the argumentation, which subsequently appeared in company propaganda, he observed to Freed that some employees that had attended the April 7 union meeting were caught up in initial enthusiasm and had now changed their minds and that these employees, who had worn union

[27] It was in the course of this conversation that, according to Watkins, Campbell made statements that the Company knew all it needed to know about what Watkins was doing in connection with the Union, and that the Company knew that he had met with union officials at certain bars in Williamsport. I have heretofore discredited this testimony. It is noted that in connection with the immediate conversation, Campbell, who obviously lacked recall as to the specifics, testified to the effect that it was his recollection that Watkins had requested a meeting with Kenny Freed, that Campbell did not suggest any such meeting, and that, with respect to Watkins' request, he simply suggested that Watkins "call him up." Here again, I accept the testimony of Campbell. Noting that aspects of Watkins' account of the immediate conversation with Campbell, under scrutiny here, simply did not ring true, I believe that it was Watkins who requested the meeting with Freed and that Campbell's reaction was closer to indifference than the zealous encouragement which Watkins attributes to him. Also unclear is why, if Watkins had reservations as to whether Freed would meet with him, he chose not to have Campbell arrange the meeting, but elected to call Freed himself.

[28] This reference is not alleged to have been unlawful. Freed testified that he could not recall making the statement to Watkins, but indicates that he had done so to others. He credibly testified that this was a mere reference to the fact that, in the past, the divisiveness and hard feelings created in union campaigns resulted in good men quitting.

buttons in the past, would like to know how they could get a message to the Company "that they were no longer committed votes to the Union." Watkins mentioned a specific name, and Freed indicated, "Well, if that fellow is truly changing his mind or now has doubts, all he need do . . . is to take that button off or that sticker or whatever he had. . . . Take it to his foreman, hand it into his hand, and tell his foreman that this is to be given to Mr. Freed." With this the meeting closed.

Even on Watkins' account, nothing in his testimony substantiates the allegation that he was a victim of unlawful interrogation in this meeting. The only inquiry on the part of Freed was made after Watkins had expressed his reservations concerning the Union, and far from representing a collateral probing of union activity was an inherent element of dialogue conceived, initiated, and conducted to that point by the employee. The question imputed to Freed by Watkins was no more coercive than the agreement of Freed to meet, and the 8(a)(1) allegation in this respect shall be dismissed.

Freed acknowledged that, after Dan Watkins had made it clear that he was having a change of heart, Watkins implied that one of his friends had also had a change of heart but that he had been wearing a union button and his friend did not know what to do. Freed admitted that he volunteered "that if it was me and I wanted my foreman to know that I had had a change of heart, I'd take the button and give it to him and tell him." Freed denied telling Watkins that employees give their buttons to the foremen and directing him to turn them over to either Freed, Lee, or Shoaf. Although, in other areas, Freed's testimony impressed me as being thoroughly incredible, here I prefer his testimony, which in substantial part was corroborated by Shoaf, over that of Watkins.

Freed's testimony does not confirm the 8(a)(1) allegation that he "solicited . . . employees to abandon the Union." It does, however, admit that he suggested that, if so inclined, employees "give evidence that they had abandoned the Union by removing their union insignia and turn . . . it in to their supervisor." On balance, although Freed's advice was obviously and uncontrovertibly solicited by Watkins, it nonetheless violated the Act. Statements by employers which on their face are coercive are not always to be lightly regarded, simply because inspired by the solicitations of a concerned employee. The suggestion made by Freed plainly implied that those wearing union buttons had cause for alarm. Although the unlawful conduct was made in response to specific employee inquiry, it was coercive, and tended to confirm that those who overtly manifested union support could evade some unknown jeopardy by confessing to a change of mind and furnishing evidence thereof to a supervisor. In this respect, Respondent violated Section 8(a)(1) of the Act.

D. *The Alleged Discrimination*

1. Impaired conditions of work

a. *Dan Watkins*

It is claimed that during the preelection period Respondent discriminated against Danny Watkins in two respects. It is first alleged that on or about April 14, 1979, he was restricted to his shop area. Further, it is alleged that, on or about that same date, Respondent curtailed his hours of work and those of a coworker, Grant Campbell.

The General Counsel apparently contends that in mid-April Foreman Jones altered Watkins' working conditions by "restricting his physical mobility to the maintenance shop during non-work time." It will be recalled that Watkins was known to be among the leading union protagonists, if not their leader. Also, as heretofore indicated, Watkins, as a maintenance electrician, did not have regular preassigned duties but worked on an oncall basis. During his considerable downtime, he was free to do as he pleased, provided that he remained available for work. The claimed discrimination here rests upon Watkins' version of a previously considered conversation with Foreman Jack Jones in which Jones allegedly unlawfully restricted Watkins' opportunity to discuss the Union during his nonworking time. Watkins claims that in that conversation Jones told him that "he did not want me to go to the break room or the shower room, to the shower house, the restroom there, or any other nonwork areas because I was still on the clock . . . and if I was over there, he knew me and that I like to talk and that I would be talking to people who were there on their break and the subject would come up and I shouldn't be doing it." According to Watkins, he then asked Jones if he could go to the bathroom to which Jones allegedly responded, "Well, sure but come right back." According to Jones, he at no time imposed a restriction on Watkins different from that applied to all maintenance electricians. Thus, maintenance electricians are free to do as they wish and generally to go where they please as long as they make their whereabouts known so as to be available for work. Based on my previously expressed misgivings as to the trustworthiness of Watkins, I find that substantial credible evidence does not substantiate that he was in this instance restricted to his work station under conditions violative of Section 8(a)(3) and (1) of the Act.

The charge that Watkins and Grant Campbell were the object of discrimination in terms of their working hours is based on conduct attributed to Day-Shift Maintenance Foreman Tom Campbell. Grant Campbell, the brother of Tom Campbell, like Watkins, was a second-shift electrician. Their normal working hours were from 11 p.m. to 7 a.m. They received premium pay for overtime, and prior to the union campaign until some time in April, according to the testimony of Watkins, both had reported for work from 1 to 2 hours before their scheduled shift and earned additional overtime at time and a half in consequence.

At some time in early April, according to testimony of Watkins, Tom Campbell was reviewing timecards in the foreman shack. Watkins and Grant Campbell were nearby on a break. According to Watkins, Tom Campbell addressed them, stating, "by the way, boys, you're going to have to cut back on your hours," while adding, "it's not my doing." Grant Campbell reacted in protest stating, "Well, it had better apply to everybody else."

"[T]here's other electricians on these other shifts coming in 2 hours early and getting 2 hours overtime every night." Tom Campbell then said that, while the men could not come in at 9:30 p.m. anymore, they could report at 10:30 p.m., assuring a half hour of overtime. Grant Campbell continued to express dissatisfaction whereupon Tom Campbell indicated that they could report shortly before 10:30 p.m. The conversation ended with Grant Campbell stating, "Well, all right, but this better apply to all the rest."

Watkins related that he and Grant Campbell had been reporting to work from 9:30 to 11 p.m. for the entire 2 years of his employment in the maintenance department, and never before had they been instructed to cut down on their overtime.[29]

Tom Campbell testified that, during the period around Easter time, he told Watkins and Grant Campbell that "I thought they were hitting the cards a little bit to quick . . . if there was work to be done, they was to do it yes . . . but they wasn't really suppose to do it unless their was work to be done." Campbell testified that there was not as much work for the electricians on night at the time, and he felt it was necessary to slow them down. He agreed that he told them that they should clock in at or about 10:30 p.m.

I am convinced that Tom Campbell's action in this respect was founded upon legitimate considerations unrelated to union activity. Respondent produced in evidence the timecards of both Watkins and Grant Campbell covering the period March 25 through May 25, inclusive.[30] Two items of significance are revealed therein. First, the timecards show that neither Watkins nor Grant Campbell suffered a significant impairment in overtime hours after the "instruction" by Tom Campbell, than is reflected in the pattern of their overtime during the 3 weeks prior to the alleged instruction. Secondly, those timecards, together with Watkins' own testimony, reveal that it was Grant Campbell who had the greatest cause for offense at his brother's attempt to delay their starting time, for it was Grant Campbell who, prior to April 13, frequently punched in prior to 10 p.m. Thus, except for April 13, Watkins, during the period since March 25, had not punched in earlier than 10 p.m. and indeed had punched in earlier than 10:30 p.m. on only five occasions. Grant Campbell, on the other hand, during the corresponding period had punched in prior to 10 p.m. on five occasions, and had punched in prior to 10:30 p.m. on 10 other working days. Thus, all objective evidence points to the fact that Grant Campbell was the principal offender of overtime privileges, and that Tom Campbell's remark on or about April 13 would have its most telling effect on him. Yet, there is no evidence that Grant Campbell manifested support of the Union in any fashion, and Tom Campbell testified believably that, to his knowledge, his brother did not support the Union. In the circumstances, no reasonable inference is warranted that Tom Campbell took a step, detrimental in the main to his brother, in order to perfect a union-related reprisal against Watkins. The 8(a)(3) and (1) allegation shall be dismissed.

[29] Watkins' own testimony suggests that the maintenance electricians did not observe this instruction religiously. For he testified to a subsequent conversation with Tom Campbell, in which Watkins and Grant Campbell were warned that they were coming in early again. And on cross-examination, Watkins acknowledged that he only followed Tom Campbell's instructions "at times." Indeed, timecards in evidence reveal that on April 21 Watkins clocked in at 9:54 p.m. and that, on several occasions between the conversation with Campbell and the election, he reported to work substantially before 10:30 p.m.

[30] The record indicates that the conversation under scrutiny here occurred on April 13.

b. *Michael Van Laere*

It is alleged that Respondent violated Section 8(a)(3) by, in mid-April, restricting Michael Van Laere to his work station. Van Laere, an overhead crane operator on the day shift, was an active proponent of the Union, having signed an authorization card, attended union meetings, and distributed authorization cards. Prior to the alleged discrimination against him, he wore a button identifying him as a member of the organizing committee while at work. In mid-April, Van Laere was assigned the position of full-time operator of a "shake out crane" located in the south foundry. Previously, Van Laere had been a relief operator, a job which required him to provide breaks to cranemen. While serving in that capacity, Van Laere had the run of the plant, enabling him to roam around to observe who needed a break. However, about the third week in April, after his assignment to the shakeout crane, according to Van Laere, his foreman, Jim Stonebreaker, as Van Laere was returning to his crane after taking a break, told him that "beginning that day, I was not to get out of my crane at all, only for break or restroom." According to Van Laere, prior to this he had always spent his free time "moseying" around and doing nothing.[31]

Van Laere testified that, following the encounter with Stonebreaker, he had a conversation with Foundry Superintendent Dean Hughes, in which the former inquired as to why he had to stay in the crane when nobody else had to. Hughes indicated that it was a rule that he wished to put into effect for a long time and that this was as good a time as any and that he did not want Van Laere bothering Van Laere's wife anymore while she was driving a forklift.[32] According to Van Laere, he asked Hughes if this had anything to do with the fact that he wore a union button and Hughes angrily denied that that was the case, expressing that he was tired of hearing such insinuations. Hughes indicated that the rule would be enforced with respect to all cranemen.[33] Van

[31] According to Van Laere, he abided by the instruction until the week of the election, when he was transferred to a jolt crane which had virtually no downtime. Later, after Van Laere was transferred to a heat crane which had considerable downtime, Van Laere returned to his old habits and was not called down for doing so.

[32] As shall be seen, *infra*, Edda Van Laere, his wife, was an employee who drove a forklift truck in the foundry.

[33] Hughes acknowledged that he had a conversation sometime in April 1979 with Van Laere in which the latter asked why he was restricted to his crane. Hughes testified that at the time Van Laere was running a shakeout crane and that they had problems locating him and getting him to his work station, and that he told Van Laere on that occasion that he was restricted to his crane because he was wanted there when work had to be done. Hughes denied that Van Laere was at that time told that he had wanted to place such a rule in effect for a long time and that the present was as good a time as any, or that Van Laere was told that Hughes did not want Van Laere talking to his wife. In the later respects, I credit Hughes who impressed me as more reliable than Van Laere.

Laere also testified that, possibly within the same week as his first conversation with Stonebreaker, he had another with Stonebreaker in which the latter opined that the restriction was very unfair and that Van Laere could come down but he was on his own and Stonebreaker would admit to knowing nothing about it.

Respondent concedes that many crane operators are subject to extensive periods of downtime during their working day. However, according to the credited testimony of Assistant Foundry Superintendent Cecil Hollis, operators are to remain in the vicinity of the crane so as to be available when work is to be performed. Hollis testified that, because crane operators do not wear hardhats, safety considerations require that they stay in the crane. Hollis claimed that he ordinarily would instruct foremen to tell operators to get back up on the crane, if he observed them on the floor. More specifically, Hollis testified to several occasions dating back to 1978, wherein he had difficulty locating Van Laere while in need of an operator, adding he many times told Van Laere to stay in the crane area and if he did not have safety equipment to stay in the crane. He testified that, again in April when he sought to transfer Van Laere to another crane, he could not find him, and instructed Stonebreaker to do so. Stonebreaker ultimately located Van Laere in the furnace department. When Van Laere returned, Hollis told Stonebreaker to get Van Laere "to get in the crane and stay there." He denied that this instruction had anything to do with Van Laere's union activity.

Stonebreaker testified that crane operators are expected to stay in their crane area but if there is work below to stay in the crane. He testified that he had several conversations with Van Laere in which he instructed Van Laere to stay "in the area" of his crane. He confirmed that, in April 1979, Hollis asked for Van Laere, and instructed Stonebreaker to find him and tell Van Laere "to stay in the crane and not to get out other than for break, lunch, or for restroom." Stonebreaker testified this was relayed to Van Laere. Stonebreaker acknowledged that he did tell Van Laere that he felt that it was unfair that he had to stay up in the crane. Stonebreaker conceded that the restriction imposed on Van Laere was distinct from that applied to other crane operators.

Nonetheless, Hollis attempted to justify the difference in treatment by initially oberving that Van Laere's case was different from the others in that he exhibited a propensity to leave his work area to a greater extent than others. This argument is not substantiated by convincing credible proof. First, Stonebreaker admitted that he felt that the restriction as applied to Van Laere was unfair. In other respects, Respondent's contention that the restriction was justified by misconduct on Van Laere's part which was excessive stands on the strength of testimony by Hollis. He was not a credible witness. His testimony that cranemen were to remain in the crane during downtime conflicted with the testimony of Stonebreaker and was unbelievable. His testimony concerning Van Laere's propensity to wander seemed vague and exaggerated, and he admitted to difficulty in locating other cranemen as well. Indeed, in his own words, "I don't say I have any more problems with Mike than I do with any of them . . . it seems like I might have to talk to him more than the others, but see with him being a relief craneman, Mike gives the appearance that he has a right to go where he wants to go."

In this respect, I find that the General Counsel's allegations of discrimination have been substantiated. Van Laere was an advocate of the Union who openly manifested his sentiment. As Stonebreaker's testimony reveals, the instruction that he remain in his crane was unfair and it does not appear that other cranemen were ever restricted as severely. The testimony of Hollis that cranemen were to remain inside their equipment during downtime was at odds with that of Stonebreaker and seemed an implausible attempt to justify a disparate act. In any event, Hollis acknowledged that he had no special problems with Van Laere, and had problems from time to time with all operators. The extreme measure taken against Van Laere in confining him to the cockpit of his crane would effectively restrict him from engaging in union activity during periods of downtime in the vicinity of his crane, and, consistent with the observation of the General Counsel, Respondent's failure to credibly explain this disparate act in the face of the union animus reflected on the entire record warrants the inference that it was Van Laere's prounion bent and not the need to assure that Van Laere remained available for work that led to the excessive, unfair, and unprecedented action taken in his case. Respondent thereby violated Section 8(a)(3) and (1) of the Act.

c. *Charles Horath*

It is alleged that Respondent discriminated against Horath in two respects. First is a claim that he was among employees on line 4 in the cleaning room whose 7 a.m. break was suspended because of their union activity. It was further alleged that, in reprisal for union activity, Horath was prohibited from having repair work performed on his personal property within the plant.

Horath signed a union card and was a member of the employee organizing committee. He attended the union meeting on April 7, distributed literature at plant gates, and, during discussions of the Union with Foreman Gilbert Matteucci, Horath claims to have informed him that he was for the Union. Horath testified that, beginning the first week of April, he wore a union button to work and continued to wear such insignia until he cast his ballot on May 10. Horath also wore a big UAW sticker and "vote yes" stickers on his hardhat, as well as a "UAW-Vote Yes T-shirt."

Horath was a handgrinder on line 4 in the cleaning room. His shift was from 5:30 a.m. to 4 p.m. The regularly scheduled morning break for his line was at 8:30 a.m. He testified that, prior to the advent of the Union, four or five coworkers on his line, and a group from another line, would take an unscheduled coffeebreak in the breakhouse at 7 a.m. According to Horath, sometime in April, Matteucci told them that they could no longer remain in the breakroom but that the men could get their coffee and take it back to their work table if they wished. Horath claims that Don Merritt, Harold Bass, Jim Walls, and Clyde Tucker were in his presence on that occasion. According to Horath, all except Jim Walls

wore union insignia. However, none of the others testified. Horath claimed that although Matteucci enforced this rule for about 3 months, during 1980, the restriction was relaxed and Horath would go to the shack maybe once a week to get a cup of coffee at 7 a.m. without anything being said.

Horath acknowledged that the men had been warned about taking the unscheduled break "just a few times" before the advent of union activity. Although he afforded argumentative testimony to mitigate this factor, he acknowledged that employees have been chased out of the breakroom on prior occasions. He also acknowledged that Matteucci, prior to any union activity, had told him that Harold Anno, superintendent of the cleaning room, had been on him about the unscheduled breaks. The issue here need not be labored. Credible evidence adduced by Respondent establishes that the action taken with respect to Horath and others on his line complained of here was no more than the routine exercise of supervisory authority. Foremen on the cleaning line, according to credible testimony, at approximately 7 each morning gathered in the foreman's office to do their paperwork. Over the years, line employees have taken an unauthorized break during their absence. Cleaning Room Superintendent Anno testified that this had been an ongoing problem for many years, and that, at regular intervals, he instructed his foremen to curtail the practice. There is no credible evidence that this instruction was implemented by the line foremen on any disparate basis, and, indeed any interpretation flowing from the uncorroborated testimony of Horath that this was the case is rejected. Insofar as one might construe Horath's testimony as implying that, after 3 months, employees resumed taking the 7 a.m. break without interference from supervision, his testimony does not clearly disclose that, on those occasions, employees remained in the breakroom. Based on the credited evidence, I find that Matteucci instructed Horath and others that, while they could get their coffee and return to their work station, they could not remain in the breakroom at 7 a.m. for reasons unrelated to union activity, and, accordingly, shall dismiss the 8(a)(3) and (1) allegations based on his action.

The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act in denying Horath the opportunity to have personal work performed within the plant. Prior to the advent of the Union, in February, Horath was permitted to have various parts for his jeep manufactured at the plant by a line 3 welder. However, during the campaign in late April, Horath brought a "bumper" to the plant which needed repairs. He took the bumper to the work station of a welder and then upon returning to his work station found that Matteucci possessed the bumper which had been given to him by Superintendent Anno. According to Horath, Matteucci told him "no more home work done any Place," an instruction not previously heard by Horath. Horath conceded that he failed to ask permission of supervision to have the bumper repaired.[34]

Matteucci, on the other hand, testified that, on the occasion in question, he was summoned to Harold Anno's office whereon Anno gave him a bumper advising him to return it to Horath and have him take it out of the plant.[35] Matteucci testified that, on past occasions, Horath had asked permission to have work done in the shop, but that he did not do so with respect to the bumper.[36]

Anno testified that the Company maintained a policy allowing employees to have work performed on their personal property if permission were sought and granted and if the work would not interfere with production. He testified that, on the occasion in question, his line 3 foreman reported that a jeep bumper was in his welding area and that he had a lot of rush work and wanted to know if he should work on the bumper. Anno told him, "No." Anno then took the bumper to Matteucci and told him to return it to Horath.[37]

William Askren, Respondent's foreman on line 3, testified that, in May 1979, Horath gave a bumper to Bruce Dodd, a welder, on his line. Because Horath had not asked permission to have the work done, Askren testified that it was his job to report the matter to Anno. Askren confirmed that, on the day in question, line 3 was subject to heavy production demands.

Although I accept the testimony that Respondent's policy required both permission and that personal work not impede production, there are factors which favor the General Counsel's claim in this instance. Thus, Horath was an active union supporter who openly manifested his sympathy. That this might be the basis for the position taken by supervision with respect to the bumper is supported by testimony of Horath that Matteucci told him that, upon returning the bumper, no more home work could be performed at the plant. Such a curtailment in privilege was disparate and more restrictive than made available to employees generally according to Respondent's own testimony as to the nature and scope of its policy. Yet Matteucci was not examined as to what he told Horath on returning the bumper. Thus, Horath's testimony stands unrebutted. Nonetheless, I did not believe Horath. Horath impressed me as prone to testify from a biased impression of actions taken with respect to him in several areas, and exhibited a bent to reinforce the imagined through argumentative and contrived testimony. My doubts as to his credulity run deep enough to reject his uncorroborated testimony, even acknowledging his status as an incumbent employee at the time of the hearing. In my view, it is more likely that, in this lengthy hearing, Respondent inadvertently neglected to elicit testimony as

[34] Although Horath denied that, on past occasions when he had personal work performed in the plant, he necessarily asked permission every time he conceded that, when he had work done on an adapter plate in February, he asked permission of Art Fletcher, Respondent's chief of inspectors. Later, Horath ulitmately conceded that permission was required under Respondent's policy in this regard.

[35] Although leading questions propounded to Matteucci suggested that the incident occurred in May, and specifically on May 21, a date which would have followed the election, I do not construe this date to have been isolated by credible testimony on the part of Matteucci.

[36] Matteucci testified that, in December 1979, Horath requested permission to have a gear assembly fixed. Matteucci related that the gear assembly was returned to Horath after he learned that plant personnel were too busy at the time to work on it.

[37] Here again, Anno responded in the affirmative to a leading question by counsel for Respondent suggesting that the incident occurred on May 21, 1979. His affirmative response thereto was considered unreliable.

to precisely what Matteucci told Horath, than that the latter's version was true.[38] In sum, on the credible facts, I find that the action taken by Anno, Matteucci, and Askren with respect to Horath concerning the bumper was not shown by credible proof to have been inconsistent with its practice and policy, and hence did not violate Section 8(a)(3) of the Act.[39]

d. *Oscar Branson*

The complaint alleges that Respondent violated Section 8(a)(3) and (1) of the Act by cutting back on overtime hours customarily worked by Branson. As may be recalled Branson was an inspector on line 1 in the cleaning room. He signed a union card on March 7, and attended the April 7 union meeting where he joined the employee organizing committee. Subsequently, during the week of April 9, Branson wore a union button to work. Branson testified that on or about Friday, April 20, Chief Inspector Fletcher approached Branson and instructed him that effective Monday, April 23, Branson was to begin work at 7 a.m., rather than 4 a.m., his customary starting time. During the ensuing week, Branson worked from 7 a.m. to 4 p.m. However, on Friday, April 27, Art Fletcher told him that on Monday, April 30, Branson could resume the 4 a.m. starting time. Branson claimed that, prior to April 1979, he had been reporting for work at 4 a.m. for some 2 to 3 years.

Respondent defends on grounds that the cutback of 3 hours daily in Branson's work between April 23 and 27 had nothing to do with his union activity, but was based on a lack of work. Consistent with the defense, Branson himself admitted that other people in the cleaning room had their hours cut back because of tonnage limitations during that period. He further testified that, since April 27, his hours have fluctuated depending on production demands. When questioned as to whether he asked Fletcher the reason for the cut in his hours, Branson responded, "I didn't question him because I knew that the guys around me there, they had cut their hours too . . . the welders and grinders, they cut their hours, I believe until 5:30 every morning and they brought me in at 7." He acknowledged that it would have made no sense for him to be called in at 4 a.m. after the other men had their hours cut.

I credit Harold Anno who testified that a pattern change on the castings process resulted in a reduction in output and required the cutback. In consequence, six grinders on the north end of the line suffered a reduction in hours during a 1-week period. This reduced the work flow at the south end of the line where Branson performed his inspections. The six grinders who had been reporting for work at 5:30 a.m. were told to report at their normal starting time of 7 a.m. Respondent's evidence together with Branson's, as to his own impressions, substantiates that the 1-week reduction in hours was attributable to the lack of work and had nothing to do with Branson's openly manifested support of the Union. Accordingly, I shall dismiss the 8(a)(1) and (3) allegation in this regard.[40]

e. *The "pep set" crew*

The term "pep set" pertains to a process of making cores out of a blend of a branded product and a special sand. In April 1979, the crew assigned to the pep set operation consisted on various dates of Don Soloman, Mike Mitton, Edda Van Laere, Tom Lambka,[41] Terry Badger, David Roach, and Joyce Pearson.

In early 1979, Respondent experienced difficulty in obtaining the particular type of sand utilized in the pep set process. As a result of deferred deliveries, Dean Hughes, the foundry superintendent, authorized Goudy to work coreroom employees overtime on two Saturdays. Pep set was not a function which typically required overtime work. However, according to testimony by Hughes and Goudy, the latter was informed by Hughes generally that the overtime should be distributed as fairly as possible among coreroom employees. Thus, pep set work was available for coreroom employees on Saturday, March 24, and Saturday, April 14, on an overtime basis. In addition, other overtime work, not involving pep set, was available to south coreroom employees on April 7.

The General Counsel contends that overtime was not made available to the pep set crew on April 14 because it was in that week that members thereof first manifested their support of the Union. It will be recalled that on Saturday, April 7, an union meeting was conducted. Van Laere, Lambka, and Roach testified that they, together with Mitton, began wearing union buttons on Monday, April 9. Hughes admitted that, if pep set work were available during regular hours, the seven individuals on the crew would normally be the first assigned to it.

[38] It is noted in this respect that Harold Anno testified that Matteucci told Horath that the work could not be done as there was no time to do it. As there is no evidence that Anno was present during the conversation between Matteucci and Horath, he plainly was in no position to afford primary evidence as to what Horath was told.

[39] I have not overlooked what might be argued as a basic flaw in testimony by witnesses for the defense. Thus, though it is the sense of Askren's testimony that he took the bumper to Anno primarily because Horath had not sought permission, Anno's testimony, and that of Matteucci, does not specifically acknowledge that they were aware at the time of Horath's failure to obtain permission. Instead, a composite of their testimony is susceptible to interpretation that Anno and Matteucci acted solely on grounds that line 3 was too busy to perform the work at the time. On balance, I considered this to be more in the nature of an ambiguity than a material discrepancy sufficient to alter conclusions reached with respect to this allegation.

[40] In crediting the testimony offered by the defense, I have noted testimony by employee Don Merritt, who claims that on April 23 at approximately 6:30 a.m. he overhead Line Foreman McBride ask an inspector from another line, Richard Brooks, to inspect some parts needed for shipment that day because Oscar "wasn't going to show up until 7 a.m." Although Line Foreman McBride testified that he could not recall such a conversation, and Richard Brooks did not testify, this testimony does not go so far as to support a conclusion that on April 20 McBride, or any other responsible official in the cleaning room, knew or anticipated that work would be available off Branson's line the following Monday. Furthermore, although Branson testified that during his prior overtime hours he performed a variety of jobs some of which may or may not have been associated with work on line 1, this testimony was vague, and I am not convinced that his capacity to perform other work necessarily implied that such work was available during the period in question or that it was available in sufficient quantities to warrant a conclusion that his overtime hours should at least have been extended in part.

[41] According to Respondent's time records and as related by Robert Goudy, general foreman in the south coreroom, Lambka did not work on the pep set process between March 5 and 31.

On March 24, all members of the pep set crew worked except Roach, who was offered and agreed to work that Saturday but did not show up, and Badger, who rejected overtime. However, the only member of the pep set crew that worked on April 14 was Joyce Pearson, the wife of foreman Lawrence Pearson. Though pep set work was performed on April 14, Respondent utilized other south coreroom personnel in connection with that process; namely, Wesley McDougal, Steve Ward, Bill Clem, Carl Greer, Wayne Howard, Walter Blankenship, Avalene Harrison, and Charles McCarthy.[42] It is noted that Respondent's payroll records indicate that on Saturday, April 7, though no pep set work was performed, all members of the regular pep set crew were assigned overtime, except Badger, who as indicated preferred not to.

Apart from the question of when the four pep set employees began wearing union insignia,[43] Respondent's explanation for the withholding of overtime as to this group on April 14 is frought with inconsistency. First it is noted that the testimony of both Goudy and Hughes implied that members of the pep set crew would be preferred to perform pep set work; this of course was not the case on April 14. On the other hand, pep set work was *not* performed on Saturday, April 7, prior to the blandishment of union insignia by Van Laere, Mitton, Roach, and Lambka. Yet, those individuals, though having been offered and having accepted overtime on March 24,[44] were afforded the overtime work on April 7. Indeed, even Lambka, who on March 24 agreed to work, but did not show up, was included in those assigned overtime on April 7. Thus, if Goudy and Hughes are to believed, though coreroom overtime work was to be distributed equally, other coreroom employees (Billy Clem, Wayne Howard, Avalene Harrison, and Charles McCarthy) were bypassed at the first opportunity and apparently not given a crack at overtime until April 14. And, thus, this group was bypassed as successive overtime opportunities were afforded to pep set crew employees, even though on April 7 no pep set work was performed. This shows that overtime was actually distributed with no immediate implementation of any equality guideline and ultimately in violation of the established practice of assigning pep set work to members of the pep set crew. My difficulties with Respondent's explanation is compounded by Goudy's further explanation that attendance was a factor considered in excluding Van Laere, Mitton, Roach, and Lambka from overtime on April 14. His testimony in this respect uncovers further inconsistencies. Thus, he claims that Mitton was denied overtime on April 14 because of a lateness incurred during the prior week.[45] Van Laere allegedly was not asked to work overtime on April 14 because of an absence on April 10. Roach allegedly was not asked to work overtime on April 14 because he had also been late a day during the week and had not reported to work on Saturday, March 24, when he agreed to work overtime that day. Lambka allegedly was not asked to work overtime on April 14 because he twice that week left without completing his work. Goudy's reasons for excluding these members of the pep set crew from overtime on April 14 when work customarily assigned them was performed were symmetrical to the reasons afforded by Goudy as to why he preferred them for overtime over other coreroom employees on earlier Saturdays. Thus, he claims that Van Laere and Mitton were assigned overtime on March 24 because they had been absent that week and Goudy wanted to provide them an opportunity to "catch up on their pay." He also testified that, though David Roach had agreed to work overtime on March 24 and had failed to show up, Roach was not barred from overtime on April 7, even though no pep set work was performed on that date.

The explanation of Goudy and Hughes as to the motive underlying the overtime distribution issue in the final analysis was viewed as no more than contrived afterthought. It was so unbelievable as to actually enforce the General Counsel's claim of discrimination herein. Contrary to an assertion in Respondent's brief, documented evidence does not disclose that overtime in the south coreroom was divided equally, and indisputable evidence establishes beyond question the failure to adhere to any such standard. In sum, although Soloman was not shown to have been a union supporter, I am convinced that the denial of overtime to those customarily assigned to pep set work on April 14, when such work was available, was in reaction to the supervening union support first manifested by Van Laere, Roach, Lambka, and Mitton on April 9. Accordingly, I find that, but for the overt manifestation of union support, all five, consistent with Respondent's practice, would have been assigned their normal work on Saturday, April 14. Respondent's failure to do so violated Section 8(a)(3) and (1) of the Act.

2. The discharges[46]

a. *Inez and Debra Tornquist*

Inez Tornquist's employment with Respondent dated back to 1970. Her daughter was hired in August 1976.

[42] Goudy testified that he never observed union buttons being worn by McDougal, Greer, Ward, Blankenship, or Pearson. No evidence exists as to the union sentiment of Harrison, Clem, Howard, or McCarthy.

[43] Goudy and Hughes indicated that it was in March when they first observed Mitton, Van Laere, Roach, and Lambka wearing union buttons. No evidence was offered as to their basis for recall of that which, in the context of this overall campaign, might be viewed as a somewhat obscure event. I did not believe this highly critical aspect of their testimony and credit the employee witnesses as to this matter.

[44] No work was performed in the coreroom on Saturday, March 31.

[45] I have taken note that Mitton was the only south coreroom employee asked to work overtime on Saturday, April 21.

[46] On April 22, in the course of the hearing, at the conclusion of her case, counsel for the General Counsel moved to withdraw the 8(a)(3) and (1) allegations based on the (1) discharges of Michael T. Tindall, Charles Sanders, William R. Bennett, Theodore Farley, and Stanley E. Worley, and (2) the alleged reduction in Luis Compos' employment and the assignment of more arduous work to Compos and Kathy Spear. At the conclusion of the General Counsel's case, a motion to dismiss was made on behalf of Respondent with respect to alleged discriminatee Mark Shelley. That motion was granted by me as no affirmative evidence had been presented in support of his cause. In addition, also in the course of a hearing on April 23, 1980, it became apparent that another alleged discriminatee, Walter Hembree, would not appear. As no evidence was offered in support of said allegations, and as, at the close of the General Counsel's case, there was no basis for inferring that a pattern of discrimination

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Both worked in Respondent's administrative offices where Inez was the payroll clerk. Debra worked on the payroll with her mother and another employee, Tom Gossett, and also served as a relief switchboard operator and from time to time assisted in Respondent's printing department. Both were discharged on Monday, May 7.

The Tornquists were office clericals, and hence not among the employees sought by the UAW. Indeed, insofar as this record discloses, they held no view with respect to the issue of representation. However, on Tuesday afternoon, May 8, an antiunion rally was conducted on the streets adjacent to the plant. The Tornquists did not plan to attend. The General Counsel contends that the Tornquists were discharged because and only after Rusty Marrison, Respondent's secretary-treasurer, and/or Office Manager Robert Blickenstaff learned of their declared intention not to attend that rally. Respondent by way of defense argues that the Tornquists' intention with respect to the rally was unknown to Respondent's officials until after their discharges, and that they were terminated in consequence of their failure, without permission, to return for work after lunch on May 7. Respondent, alternatively, contends that, even assuming that the General Counsel's claim is factually substantiated, said discharges were not violative of the Act as the Tornquists had not engaged in any activity protected by the Act.

On the question of knowledge, it appears that Sue Ward, a receptionist in the office, on Friday, May 4, circulated among the clerical staff, asking each individually whether they intended to participate in the antiunion rally. The Tornquists informed her that they would not attend. Although Ward denied that she made a list of those who would and would not attend, it is apparent from her own testimony that she reduced same to memory. However, on direct examination by Respondent's counsel, Ward denied telling either Harrison or Blickenstaff, prior to the termination of the Tornquists, that they did not intend to participate in the rally.[47] On the other hand, on cross-examination by counsel for the General Counsel, Ward somewhat haltingly acknowledged that she told Rusty Harrison, in the course of the rally, that some of the girls who worked in the office did not attend, but that she did not believe that she specifically identified them to Harrison at any time. Interestingly enough, on cross-examination, however, Ward expressed a belief that she specifically informed Blickenstaff of the identity of those not planning to attend. This might well be significant because the only meeting with Blickenstaff described by Ward pertaining to the rally took place on Monday, May 7, when she requested permission on behalf of herself and certain other employees to leave early to attend the rally. No explanation is offered as to why, such disclosure if made, would have been delayed.

The suspicion deepens with consideration of the testimony of Harrison. Thus, Harrision, who preceded Ward to the witness stand, denied knowledge of the Tornquists' plans concerning the rally prior to their discharge. He testified, however, that on Tuesday, May 8, Ward came to his office requesting permission to leave early, and that during that conversation Ward told him that the Tornquists did not intend to go to the rally. His testimony was seemingly in conflict with that of Ward who could not recall ever having made such a statement to Harrison.[48]

Passing for the moment to the immediate foreground for the discharges, on Monday, May 7, Mike Buckley, the company printer, was involved in the final preparation of the company newspaper "Tapping Out." Apparently, Inez Tornquist that morning had words with Buckley after he explained to her that this was a special election issue and that he had been instructed not to let anyone see it before general distribution to all employees. Buckley subsequently reported this incident to Harrison,[49] who thereafter attempted to locate Inez Tornquist to discuss the matter with her. When Harrison told Blickenstaff at approximately 1:15 or 1:30 p.m. that he was looking for the Tornquists, and when Blickenstaff indicated he did not know where they were, the latter agreed to check. Later, Blickenstaff reported to Harrison that the Tornquists had not returned to work after lunch. Harrison asked Blickenstaff if the latter had given them permission to leave, and, when Blickenstaff responded in the negative, Harrison indicated that he felt that they should be dismissed for leaving work without permission. Blickenstaff apparently concurred.

Although Harrison testified that the above furnished the immediate cause for the discharges, he related that other factors entered into the decision. First he referred to an incident in August 1978, involving Debra Tornquist and Patty Lee, Harrison's cousin and the daughter of Ken Freed, wherein Debra Tornquist had either initiated a complaint, or afforded testimony, to a local Emergency Medical Service Commission that Lee had violated her responsibilities in affording transportation in a private vehicle to an individual suffering from gunshot wounds while an ambulance was on the way. According to Harrision, although Lee was exonerated by the commission, the entire incident upset Lee and caused her "a great deal of embarrassment." Although Lee was not employed by Respondent, Harrison at that time wanted to fire the Tornquists. He testified to expressing this to Blickenstaff, who defended the Tornquists.[50] Because

existed in which Hembree, whose union sentiment was not disclosed, could have been discharged as part of a "blind stab," or "stroke of force," Respondent's motion to dismiss that allegation was granted by me.

[47] Ward's highly material testimony in this respect was adduced in response to prejudicially leading questions propounded by Respondent's counsel. This testimony was somewhat curious, for Ward could not recall the specific date on which she learned of the terminations of the Tornquists, but speculated that it was either on the day of the antiunion rally, May 8, or the following Wednesday.

[48] Blickenstaff also denied knowledge of this fact until after the discharge had been effected. He also testified that Sue Ward on Monday, May 7, came to his office, informing them that there was a group of people intent on attending the procompany rally and advising that they would be punching out early to attend. He denied that on that occasion Ward reported who was or who was not planning to attend. His testimony does not acknowledge that Ward at any time identified those who would not attend.

[49] Parenthetically, it is noted that Harrison admitted that he had made substantial contributions to this edition of "Tapping Out."

[50] Blickenstaff testified that it was Freed who expressed the desire that Debra Tornquist be terminated as a result of the emergency treatment in-

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Blickenstaff indicated that the Tornquists attended work regularly, nothing was done at that time.

The second matter referred to by Harrison related to an allegation made by sources unidentified on the record that the Tornquists were padding their time. He asserts that such charges were discussed with Blickenstaff, who subsequently checked the timecards of the Tornquists and found that the charges were unfounded.[51]

Although denying that this was considered, Harrison also observed that he felt that Inez Tornquist had become embittered during the period after her husband voluntarily quit Respondent's employ to take another job.

Although Blickenstaff testified that the decision to terminate the Tornquists on May 7 was jointly arrived at, Harrison testified that on that occasion, unlike what occurred in 1978, he did not ask Blickenstaff if there was a basis for discharging them, but in his words, "I asked him to terminate them, to dismiss them." This action was taken without inquiry as to possible excuse or whether the Tornquists had obtained permission or reported their intended absence to any one other than Blickenstaff.[52] The precipitate nature of this action is difficult to understand when considered against Blickenstaff's acknowledgment that there were occasions in the past when the Tornquists had left early without obtaining his permission; it does not appear that on those occasions steps were taken to either discipline or to counsel the Tornquists that such practice was not in line with company policy. Blickenstaff conceded further that the Tornquists were as difficult to replace in May 1979 as they were when Freed suggested their termination in 1978.

Leaving for the moment the evidence bearing upon Respondent's assigned ground for the discharges, specific evidence of discrimination emerges from Inez Tornquist's account of a telephone conversation she received at approximately 4:20 on the afternoon of May 7. Blickenstaff does not dispute that Tornquist was called at that time and informed of the terminations. According to Inez Tornquist, however, Blickenstaff stated therein, "I hate to be the one to have to tell you this, but you and Debbie have been separated." She responded, "Fired, what did we do?" Blickenstaff went on to explain, as follows: "Freed and Rusty did not see your names on the list to attend the Company rally and Freed definitely did not like it . . . and he ordered me to call you and tell you that you'd been fired and said you had poor attitudes because you didn't support the Company and attend the rally."[53]

Blickenstaff, who testified that he was told by Harrison to terminate the Tornquists at 1:30 p.m., related that, in the telephone conversation later that afternoon, he advised Inez Tornquist that she had been separated and could come in and pick up her last check. Inez Tornquist asked why, and, according to Blickenstaff, she was told that she had taken the afternoon off, failed to obtain permission, and did not call in or give a reason for being absent. Blickenstaff related that she then became upset and stated, "Well, Kenny was out to get me," while explaining that this was because of her husband's quitting some years back and the fact that animus existed between Freed's daughter and Debra Tornquist.[54] He claimed to have expressed that he was sorry. Blickenstaff denied making any reference to the absence of the Tornquists' name on a list of those planning to attend the rally.

Weighed against all facts and circumstances surrounding the discharge of the Tornquists, I was inclined to believe the testimony of Inez Tornquist as to what was said in this conversation over the version and denials offered by Blickenstaff.[55] Her account of the telephone conversation comfirms highly suspicuous aspects of the testimony afforded through Respondent's witnesses. I did not believe the testimony of Ward, Blickenstaff, and Harrison that Ward reported the Tornquists' intentions as to the rally only after the Tornquists were discharged. Instead, Ward acknowledged that she discussed the rally with either Blickenstaff or Harrison on Friday and Monday, and the realities point to the likelihood that she disclosed the identity of those not planning to attend at the first opportunity. Indeed, there is no explanation appearing on the record as to why Blickenstaff deferred from 1:30 p.m., when the discharge decision was allegedly made, until after 4 p.m., before informing Inez Tornquist of the discharges. It is within the realm of possibility that there was no delay at all, for the discharge decision was not made until later that afternoon following a report from Ward as to the Tornquists' intentions. The verity of Inez Tornquist's account derives support from other factors pointing to the pretextual nature of the discharge. Thus, Inez Tornquist was a longstanding employee who Blickenstaff acknowledged, with her daughter, would be difficult to replace. Furthermore, the event which Respondent claims triggered the discharge was not without precedent. For while Blickenstaff admitted that the Tornquists had taken off in the past without obtaining permission from him, the evidence does not disclose that they were specifically instructed that Blickenstaff alone could afford them such permission or that they had ever been warned concerning such a practice. Finally, the fact that the discharge decision was made

cident. According to Blickenstaff, on that occasion Freed said, "I'd like to get rid of them, if we can." He testified that Rusty Harrison also wanted to terminate Debra Tornquist on that occasion.

[51] Harrison referred somewhat obliquely to an occasion when Debra Tornquist did not show up to meet her regular Saturday assignment as a switchboard operator. On that occasion, Harrison asked Blickenstaff to determine why she had not shown up. The outcome was left undisclosed.

[52] The Tornquists testified that, as had been their custom in the past, they told Tom Gossett that morning that they were going to take the afternoon off. This testimony was denied by Gossett. Although Gossett was not a convincing witness, the conflict need not be resolved.

[53] Debra Tornquist testified that, when she returned home on March 7, she had been informed by Inez of her discharge, advising that it was because they "hadn't had our names down on the sheet to go to the rally the next afternoon, and because of that."

[54] These were two of the factors which Blickenstaff described as contributing to the discharge decision.

[55] It is noted that Respondent in its post-hearing brief makes a thorough and extensive challenge to the credibility of the Tornquists. In my own view, discrepancies between their testimony and affidavits were minor and related to details which did not impress me as overriding my more thorough mistrust of Blickenstaff, Harrison, and Ward. Furthermore, many arguments made against the verity of the Tornquists are based on interpretations of the record which failed to conform to my own analysis.

precipitously, and without investigation or opportunity to consider mitigating circumstances, points to the fact that the discharge was grounded on considerations distinct from what Respondent's witnesses would have me believe.

My belief of Inez Tornquist's version of the conversation establishes that her leaving work without permission was a pretext and the real reason for the termination of herself and her daughter was their indication that they would not attend the antiunion rally. This view derives collateral support from my overall impression of precisely what occurred on May 7. I am convinced that Harrison and Freed held a longstanding grudge against the Tornquists whose employment continued only through the protective intervention of Blickenstaff. However, when a report was received from Ward that they would not lend their support to the Company's interest with respect to the union campaign, their fate was sealed and what was construed by Harrison and possibly Freed as a third and final act of "disloyality" toward the Harrisons was seized on as the ultimate cause for their termination.[56]

Nonetheless, Respondent contends that no violation inures because the Tornquists were not involved in protected activity. As indicated, as office clerical employees, the Tornquists were not subject to the organization campaign. It also does not appear that the Tornquists held views, one way or the other, with respect to the Union. Nonetheless, the rally was consistent with the Company's position in the campaign and to condone the reprisal taken against the Tornquists is to view the Act as rendering neutrals fair game for discharge if they fail to adhere to an antiunion stance. Such an anomally is avoided by Section 8(a)(3) which proscribes all "discrimination in regard to hire or tenure of employment to . . . discourage membership in any labor organization." Accordingly, as the conduct for which the Tornquists were discharged, whatever their intent, was supportive of the Union's cause, I find that Respondent violated Section 8(a)(3) and (1) of the Act in this respect.[57]

b. *The discharges for walking off the job (Billy Turpin, Vernon Hawkins, and David Freed)*

Freed and Hawkins were cleaning room employees. Turpin was employed in the foundry. All three worked the 4 to 12 p.m. shift and were terminated on the assigned ground that they either walked off the job or failed to complete their shift on Good Friday, April 13.

Specifically, Turpin testified that he wore a union button on the job every day prior to his discharge, that he signed a union card, and that he passed out possibly three union buttons to coworkers. He conceded that, on April 13, he reported for work at 5 p.m. and left at 7:50. He claimed that at suppertime he went home, and did not report back to work. Turpin admitted that he did not tell his supervisor, William Tremble, that he would not return to work that day. When he returned to work on April 16, he, together with Ted Farley and Walt Hembree, were terminated by Tremble.[58] Turpin claimed that he was not affforded the reason for the discharge, but admitted that he had left work on prior occasions without notifying a supervisor and that this had been discussed with him. He also acknowledged that prior to his termination he had been counseled concerning his attendance.

There is no merit in the claim that Turpin was terminated for reasons proscribed by Section 8(a)(3) and (1) of the Act. The discharge of Turpin was on a ground for which he had been warned previously, and on which Respondent had frequently acted in the past in separating employees. His offense involved a serious breach of work responsibility. Any inference of discriminatory motive is further allayed by the fact that, only a week before his discharge, Turpin, though his union sympathy was known, sought and was given a transfer to the second shift to accommodate Turpin and to rehabilitate his poor attendance record.[59] It is concluded that the 8(a)(3) and (1) allegations in his case are unsubstantiated and they shall be dismissed.

David Freed was a welder on line 5 in the cleaning room at the time of his discharge. His foreman was Joe Williams. He signed a union authorization card dated March 7, and attended the April 7 union meeting. He claimed to have worn union buttons to work prior to his termination. He also claimed to have distributed union literature and authorization cards to about 30 employees.[60]

[56] This analysis, though more explicit than is necessary to the result, does square with incredible testimony of Harrison. Indeed, his lack of objectivity concerning the historic relationship between the Company, its officials, and the Tornquists first emerges in his statement, "I felt that Lorene Tornquist [sic] had been very bitter towards the Company ever since John [her husband] quit." My impression was that the reverse was true. First of all, Harrison and/or Freed in 1978 sought the discharge of the Tornquists on the basis of an entirely personal affair involving Freed's daughter, a nonemployee, growing out of an incident that in no way touched upon the work relationship. Contrary to Harrison, Blickenstaff's testimony suggests that it was the Company that looked with disfavor upon Inez Tornquist after her husband quit, rather than vice versa. Thus, according to Blickenstaff, Tornquist's husband quit to take another job after approximately 25 years' service with the Company. He logically points out "this caused some concern with managenent . . . they felt they had spent some money and some time training him and they kinda questioned his loyality to the Company . . . it was a disappointment that he left." It is not without significance that Harrison downplayed this aspect of the background. For while he disavowed that this was among the reasons on which he decided to effect the discharges, Blickenstaff testified that one of the reasons for the discharge was "anxiety" between Inez Tornquist and some of the officers of the corporation. When asked to explain on examination by Respondent's counsel what he meant by this, Blickenstaff referred to the quitting of John Tornquist. In my opinion, Harrison falsely portrayed this entire matter to obscure his own view that the Debra Tornquist-Patty Lee incident and the quitting of John Tornquist were acts of disloyalty, which, finally, became intolerable, when manifested by the Tornquists' failure to support the antiunion rally.

[57] See, e.g., *San Antonio Machine & Supply Corp.*, 147 NLRB 1112, 1119 (1964).

[58] It will be recalled that Farley and Hembree were named as discriminatees in the original consolidated complaint. Farley was deleted, however, on motion by the General Counsel, and the allegations with respect to Hembree were dismissed by me as no evidence substantiating a *prima facie* case of discrimination was offered with respect to him.

[59] Based on the credited, uncontradicted testimony of Earl Hornaday, day-shift foreman in the south foundry.

[60] Freed's name appears on a letter sent to Respondent by the Union identifying members of the organizing committee. This letter is dated May 2, and hence was not forwarded until well after the Freed discharge. See G.C. Exh. 3.

Freed testified that on Friday, April 13, after working for little more than an hour, he told Williams that he was going home early. According to Freed, Williams responded, "Good, the more that goes home, the less I have to do." Freed related that subsequently he learned from a friend that he had been discharged, and, accordingly, on Monday morning, April 16, he went to the plant where Bob Crawford confirmed that he had been terminated. He claimed that he was not told the reason for his termination. Freed testified that that evening he again returned to the plant, and asked Williams the reason for his discharge. When Williams responded that it was because he had left work on Friday without permission, Freed attempted to remind Williams of their conversation on Friday. Williams denied that any such conversation took place. Freed acknowledged that he had been warned on a prior occasion for leaving work without permission. His testimony bears no explanation as to the reason for his departure after working some 72 minutes on April 13.

I did not regard Freed as a credible witness. Respondent's testimony that Freed left work in anger at the work he was assigned that evening was preferred.[61] I also credit the implicit denial by Williams that he in any form had a conversation with Freed in which Freed was granted permission to leave. I also credit his version of their conversation on Monday, April 16, which reflects that there was no reference made by Freed on that occasion to any conversation on April 13. I also credit testimony that, prior to April 13, Freed had complained concerning his work assignments in the past, that Dan Lee had informed him to do the work directed by his supervisor or be terminated,[62] and that, in early January, Pete Holycross, assistant superintendent of the cleaning room, told Williams, in Freed's presence, that, the next time Freed walked off the job, Williams should fire him.[63] Based thereon, I find that the Freed discharge was triggered by the precise offense for which he had received discharge warnings on at least two prior occasions in the past, and that union considerations failed to contribute to Respondent's action in that regard. The 8(a)(3) and (1) allegations in his case shall be dismissed.

Vernon Hawkins, prior to his discharge, claimed to have attended the union meeting in Williamsport and to have worn a union button to work each day for about a month prior to his termination. Hawkins claimed that he also distributed buttons and authorization cards to fellow employees.

According to Hawkins, he reported for work on April 13 at 4 p.m. He claimed that he began his usual duties as a handgrinder and then was transferred to work on an oven. As a handgrinder, Hawkins was eligible to earn incentive pay, but was ineligible for piece rates on the oven. Hawkins claimed that he protested having been transferred to his supervisor, who informed him that he would have to remain on the oven or be fired. At approximately 7 or 7:30 p.m. Hawkins "just decided" to go home. He did so without informing any supervisor. According to Hawkins, he went to the plant at approximately noon on the following Monday to see Bob Crawford because he had learned that another employee had been discharged. Crawford informed Hawkins that he too had been terminated. Hawkins claimed that he was not given a reason for the discharge, but that Crawford told him that he could not get his job back for at least a month "until things cooled off." Hawkins claimed that he returned a month later to see if he could be reemployed, and that Crawford stated that "there wasn't any way that he could hire me back for at least a year." Hawkins acknowledged that he had been transferred to the oven on prior occasions, and that such work was no more difficult than his normal work. Hawkins, who had been discharged on two prior occasions, was considered an essentially unreliable witness. His testimony that, following his discharge when he sought reemployment, Crawford made statements to the effect, first, that he could not be hired for at least a month and, second, that he could not be hired for at least a year, or until things cooled off, was not believed though uncontradicted. I find that Hawkins was discharged by Respondent solely on the basis of an offense which had constituted the reason for discharge for in excess of 75 employees during 1978 and 1979, and that the evidence fails to substantiate that union support played any role in his termination. Accordingly, the 8(a)(3) and (1) allegations in his case shall be dismissed.

c. *Phillip Riley*

Riley was discharged on April 6. At the time he was a second helper in the electric furnace department. As such, he worked under the immediate authority of Sam Fleck, who was classified as a "head melter." Fleck reported to Steven Froedge. Prior to his discharge, Riley signed a union authorization card. He claimed to have discussed the union on a number of occasions in the plant and in the present of others in the "melter" classification, including Bill Kerst, Ira Haymaker, Danny Anderson, Bill Hubbard, and Merle Dotson.[64] In their presence, Riley claims to have expressed the opinion that, if they had a union, employees would have better wages, working conditions, and less fear for their jobs.[65]

In January, Riley requested and was given a transfer to the furnace department. This was not Riley's first stint in the furnace department. In August 1978, Riley was assigned there, worked 1-1/2 days, and then quit without affording the Company any notice whatsoever.[66] Froedge credibly testified, following his rehire, that, when Riley was again transferred to his department in January 1979, he informed him that rigid attendance requirements were observed in the furnace department, that the department had the best attendance record in the plant, and that he would not tolerate absenteeism.

[61] See credited testimony of Joe Williams.
[62] See credited testimony of Dan Lee.
[63] See testimony of Holycross and Williams.
[64] Riley admitted that he did not discuss the Union directly with any of the five melters but that they were present when he discussed it with Zarel Garland.
[65] The record does not substantiate that the melters were supervisors and although the complaints set forth some 43 individuals, all alleged to be supervisors, no melters were among them.
[66] This was the second time Riley quit Respondent. He did so in 1976, after 5 years of employment.

Following the transfer to the furnace room, Riley admitted that he was absent 2 days in January and since then admitted to being late two or three times and to have worked 2 partial days. He also was absent in the period prior to his discharge for 10 days while on medical leave. He was absent again in April.

As for the discharge, it appears that Riley, in the furnace room, was compensated at a third helper's rate, but was doing a second helper's job. In March, Riley approached Fleck asking about his rate. Fleck informed him that he was not given a raise because of his attendance, and again counseled Riley as to the latter. Following this, Riley was again absent. Based thereon, on April 6, Fleck attempted to counsel Riley concerning his absenteeism. Riley became upset, charging that he was being treated unfairly, stating if you "don't want me in the department, I'll take a transfer." Fleck then sent Riley back to work, and informed Froedge of what had transpired. Froedge, having received information that the meeting between Fleck and Riley had not gone to well, sought out Riley to discuss his absenteeism. Riley, at that meeting, responded by accusing Froedge and Fleck of not treating him fairly, arguing that he was not paid enough. Froedge indicated that he would not get a raise working short shifts and with poor attendance. Riley indicated that, in that case, he wished a transfer.[67] Riley was again sent back to work. Froedge called Crawford and learned that the only vacancy available was in the cleaning room. Froedge then offered that position to Riley. Riley indicated that he did not wish to go to the cleaning room but wanted to return to the furnace department. Froedge then indicated to Riley that "[w]ith his attitude he was not needed in the furnace department."

Contrary to the General Counsel, there is no basis for imputing knowledge of Riley's union activity to Respondent.[68] The melters, though having worn white hats, were not shown to possess indicia of supervisory authority. Froedge credibly testified that he had never observed Riley wearing union buttons or passing out cards or union paraphernalia, and had never discussed the Union with him. He further credibly testified that he had received no reports that Riley was involved in the organization effort and was unaware of his union activity. I find that the discharge of Riley was based solely on his refusal to accept an offer of transfer on the heels of a bad feeling engendered by his own frustration of efforts to counsel him concerning his poor attendance. The allegations that he was terminated in violation of Section 8(a)(3) and (1) of the Act shall be dismissed.

d. *Joma Stewart*

Stewart was hired in March 1977. Her father Arthur Hullihan had been employed by Respondent as a chief chemist for some 45 years, and had known Kenneth Freed for some 40 of those years. Stewart in June 1977 volunteered for work in Respondent's gamma ray department. At the time, she was told by Freed and McBride that she was to be trained for a second shift because the only radiographer, Dick Estes, had been working 60 to 70 hours per week. Stewart was terminated on April 26, 1979. At that time, Dick Estes was the only other employee skilled in radiography on the payroll. The gamma ray department was subject to supervision by Harold McBride, quality control supervisor.

Stewart, prior to her discharge, executed an authorization card on March 7, and attended the union organization meeting conducted on April 7. There is no dispute as to Respondent's knowledge of Joma Stewart's union activity. Thus, Ken Freed on Monday, April 9, admittedly telephoned Arthur Hullihan, Stewart's father. Hullihan was requested to come to Freed's office. He did so, whereupon Freed informed Hullihan that his daughter had attended the union meeting the previous Saturday, and that she seemed surprisingly enthusiastic about the Union. Freed asked Hullihan to talk to his daughter in an effort to persuade her to abandon the Union. Hullihan agreed to try. That same morning at or about 9 Freed again called Hullihan at the lab and said, "Mike you don't need to talk to Joma, we're going to try another tact."

The gamma ray department is an arm of Respondent's inspection function, wherein X-rays of sample castings are taken, using cobolt 60, a byproduct of uranium, as the energy source. Because of the utilization of radioactive substances, the gamma ray room is regulated by the Nuclear Regulatory Commission (NRC). The department is licensed on a 5-year basis by the NRC. The most recent application was effected by Respondent in March 1978. At the time of that application, Stewart had the status of "assistant radiographer." In that capacity, under NRC regulations, Stewart would not be permitted to work alone. Respondent adduced evidence that a month after the application was filed, on April 10, 1978, Stewart was advanced to the position of "radiographer." Stewart testified that she was never advanced to that position, and Harold McBride admitted that he never informed her of this promotion.[69] Insofar as this record discloses Stewart was never informed that she had been advanced to the status of "radiographer," a classification in which she could work alone without supervision.

On April 9, the same day that Freed discussed Stewart's union support with her father, McBride informed her that a new shift would be established in the gamma ray room, and that it would be manned by Stewart. At that time, Stewart simply indicated that she preferred to remain on the day shift. On April 10, McBride instructed Stewart to report for work at 2 p.m. the next day. She did as instructed.[70] Prior to April 1979, there

[67] Riley testified that in telling Froedge that he wished a transfer he indicated that he would work in any department except the cleaning department. Froedge, with corroboration from Fleck, testified that no such reservation was expressed. I credit Froedge and Fleck, who impressed me as more reliable.

[68] As in the case of David Freed, Riley's name appears on G.C. Exh. 3. However, as indicated that document was not forwarded to Respondent until well after Riley's termination.

[69] Radiology Safety Officer Williamson who allegedly participated in the promotion of Stewart is no longer employed by Respondent and did not appear as a witness.

[70] As shall be seen, McBride did not impress me as a reliable witness. Where his testimony conflicted with that of Stewart, it was my opinion that she was the more believable.

had been no second shift in the gamma ray department for some 17 years. Although Stewart had worked on a sporadic basis alone in emergency situations because the other radiographer was unavailable, and had been told at the time of her assignment to gamma ray that she was likely to be placed on a night shift, as time passed she was not assigned to that position until some 2 years later. This occurred, insofar as this record discloses, without Stewart having been informed that she had been made a 'radiographer," and hence qualified to work alone under NRC regulations.

According to Stewart, she had difficulty working alone, and felt that she lacked experience to do so. Having done so for 6 nights, as of April 25, Stewart lacking confidence in her ability to continue, wrote the following note:

> Mac: I can not cope with working alone on the night shift any longer. I cannot handle it physically, mentally, or emotionally. I already have shingles, and I feel I will have a total breakdown if something isn't done.
>
> I can see three solutions to the problem:
>
> A. Put me back on day shift either in Gamma Ray or quality control.
> B. Get me transferred to another job.
> C. Fire me.
>
> Unless you prefer B or C, I will start coming in at 5:30 a.m. on Monday, April 30.
>
> x
> Joma

McBride related that on April 26 he found the note in his desk drawer and that it made him "mad." When questioned by counsel for the General Counsel, McBride explained, "Well, I read the note and it made me mad . . . that's all there was to it." McBride claimed that he took the note to Works Manager Dan Lee, expressed his feelings, and Dan Lee simply told McBride that he was the boss. McBride then decided to discharge Stewart.

At the time of the discharge Estes and Stewart were the only radiographers in Respondent's employ. Also, Estes had been working some 60 hours per week. Prior to Stewart's transfer to the night shift, an event first announced on the day Freed discussed Stewart's union involvement with her father, she generally had worked only until 4 p.m.; McBride claimed to be aware of the fact that she did not like working past 4 p.m.

As for the discharge interview, Stewart credibly testified that she reported for work at 2 p.m. on April 26. McBride informed her that he had received the note, and stated that all he could offer was work on the night shift. Stewart again asked if there was any chance for a transfer, and McBride answered in the negative, indicating that Stewart was "too valuable" where she was. Stewart then asked for time to think it over. McBride left and returned approximately 20 minutes later. Stewart credibly testified that she then informed McBride that she decided to continue to try working on the night shift, though very unhappy about it. McBride then said "in order to avoid a lot of confusion, I'm going to go ahead and separate you."

Thereafter, on April 27, Stewart returned to the plant and was afforded the opportunity to discuss her termination with Dan Lee. Lee indicated, in the course of their conversation, that he had heard of the note she had left for McBride and that "several people were pretty upset by it." Joma indicated that she was upset at the time she wrote it, and asked for her job back. She discussed the difficulty she was having working the night shift alone, and also pointed out that she was working without any supervision even though she was classified as an assistant radiographer trainee. Lee indicated that he would check Stewart's assertion that this was in violation of NRC regulations and get back to her.

Lee's version of this conversation is not substantially at odds with that of Stewart. He claimed, however, that he did look into her contention concerning NRC regulations, and was informed that Stewart in fact had been advanced to the position of radiographer.

The record is devoid of suggestion that, apart from Stewart's written expression of dismay on April 25, Respondent had any problens with her ability or work performance. At that time, Respondent's own evidence indicates that pressures to increase output of the gamma ray department necessitated establishment of a second shift. Respondent, prior to the discharge, had invested 2 years of training in Stewart. Her departure left Respondent with only one qualified radiographer and denied Respondent any basis for continued operation of a second shift in the gamma ray department.[71]

The foregoing, combined with McBride's own explanation for his actions, heightens the claim of discrimination herein. His own testimony discloses his awareness that Stewart was under medical treatment prior to having been assigned the evening shift. Indeed, he asserted that he deferred the assignment for several days on that very ground. Thereafter, he claimed that Stewart offered no evidence of dissatisfaction with her new assignment until the note which came into his hands on April 26. That note pointed out that Stewart was suffering from "shingles" and further plead her vulnerability to "total breakdown." He claimed to have reacted with anger and discharged Stewart, without consulting her, because the note revealed her desire to set her own hours and terms of employment. Thus, McBride's reaction to the note reflected a striking turnabout in attitude

[71] McBride testified that at the time Stewart was put on the night shift the gamma ray department was backlogged with orders and Estes was working 60 hours weekly. I give no weight to testimony by McBride that prior to the termination of Stewart steps were taken to reassign to gamma ray a former chief radiographer, who later was assigned as an assistant radiographer, but had a physical problem requiring his removal from the gamma ray department. According to McBride, because of the pressure on the gamma ray department, he made an appointment at a medical clinic to determine whether Karl Wiegle was capable of returning to the gamma ray room, and Wiegle was assigned to the gamma ray department immediately after Joma "quit." I did not believe McBride insofar as he related that efforts to clear Wiegle for placement in gamma ray predated the discharge. McBride, with respect to this entire incident, afforded untruthful testimony at every turn. However, even if I were to believe McBride in this regard, it is noted that Weigle, as an assistant radiographer, would not be qualified to work alone and could not be utilized as part of an extension of the second shift.

toward Stewart's medical condition. His testimony, including the denial of knowledge of Stewart's union activity, did not ring true and I am convinced that the explanation for his action lay elsewhere.

Thus, Kenneth Freed, prior to the transfer and discharge, admittedly acquired knowledge of Stewart's union support. Freed, by his own admission, did not hold this disclosure in confidence. In the effort to discourage her union support, he enlisted the aid of her father, and then, according to his testimony, discussed the same issue with Charles Bowles, a purchasing agent for Respondent, whose daughter worked with Stewart and allegedly informed on Stewart's prounion stance.[72] Yet, Freed would have me believe that his avowed interest in discouraging Stewart's union activity did not carry him to discuss her involvement with other management representatives, including her boss McBride and Dan Lee. I believed neither Lee, McBride, nor Freed in this respect, and I find that, on all the evidence, an inference is warranted that McBride, in effecting the precipitate discharge of Stewart, merely implemented a scheme contrived by Freed to rid the Company of an employee whom he had hired, and whose prounion support was viewed as an act of ingratitude toward a Company with which her father had been identified for some 40 years.[73] I credit Stewart's testimony that she was first informed of her transfer to the night shift on April 9, the same day that Freed had communicated with her father concerning her union activity. The timing of those events amounted to more than mere coincidence. For McBride, himself, acknowledged that Stewart did not like to work evenings, and I am convinced that the transfer to an undesired shift was the "tact" to which Freed had in mind when he spoke to Hullihan. Tending to support that view further was Stewart's credible testimony that on April 26, in her second conversation with McBride, prior to the discharge, she expressed her willingness to remain on the night shift, an offer disregarded by McBride because by then, I find, the discharge of this trained, skilled, and needed worker had been inscribed indelibly. For the above reasons, I find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Joma Stewart on April 26 in reprisal for her union activity.[74]

e. *Robert Scott*

Scott was terminated on April 13. At the time, he was a grinder on line 4 in the cleaning room, working the 4 p.m. to 12:30 a.m. shift. His immediate supervisor was Foreman Don Mitton. On April 13, Good Friday, Scott did not report to work. He was terminated that evening by Cleaning Room Night Superintendent Paul Thomas on the assigned ground of "excessive absenteeism."

Scott manifested union support by signing cards, both designating the Union as his representative and indicating his desire for membership on the employee organization committee. He discussed the Union with coworkers, and wore union buttons to work signifying his support thereof.[75]

I find that Scott was terminated for legitimate cause. His only explanation for his absence on April 13 was that he took off to attend to "personal business." He admittedly neither called in nor otherwise informed supervision as he knew was required. In the years 1978 and 1979, Respondent terminated some 279 employees on the ground assigned in Scott's case. Scott himself had been discharged by Respondent once in 1970, and again in 1977, during earlier employment terms, for missing too much work. Thomas and Mitton credibly testified that, prior to the discharge of Scott, he had been counseled concerning his absenteeism. I find that the reason assigned for the termination of Scott was triggered by an unjustified absence,[76] and that absent proof that he was a victim of disparate treatment or evidence that he was an object of specific union animus, I find that he was among hundreds of employees terminated annually because of their inability to fulfill the obligation to attend work. The 8(a)(3) and (1) allegations relative to his discharge shall be dismissed.

f. *Randy Carr*

Carr, like Scott, worked in the cleaning department under Mitton's immediate supervision. Carr had been warned previously concerning his attendance.[77] On

[72] It will be recalled that Freed testified that he had two conversations with Stewart's father. In the second conversation, he informed Hullihan that his efforts would not be needed in the effort to persuade his daughter against the Union because a different "tact" would be taken. According to Freed, the tact he had in mind came to light through an intervening conversation with Charles Bowles, who suggested that he felt his daughter could do a better job in talking to Stewart than her father, Hullihan. According to Freed, this seemed plausible to him, and therefore he called Hullihan back and told him to forget the earlier conversation as he "had something else in mind." Bowles attempted to confirm that he had such a conversation with Freed, and that Freed had indicated that he had talked to Hullihan about Stewart's prounion bent. Bowles claimed that, while he did not know the nature of the relationship between Stewart and her father, he felt that since his daughter was her age perhaps she could talk to Stewart. Bowles admittedly had not discussed the matter with his daughter before suggesting such an approach to Freed, and he acknowledged that his daughter was not a good friend of Stewart, but merely an acquaintance. As I understand his testimony, Bowles merely held a limited, generalized conception of the relationship between his daughter and Stewart. Further, while the conversation with Freed would have occurred on April 9 and the discharge was on April 26, Bowles could not even recall whether he discussed the "tact" with his daughter. I did not believe Bowles or Freed in this respect. Freed's explanation that his conversation with Bowles provoked his second phone call to Hullihan struck as illogical and untrue. Intervention by Hullihan and the suggestion allegedly made by Bowles were not mutually exclusive means of pursuing Freed's interest in reversing Stewart's union sentiment. His incredulous testimony in this regard impressed me as an attempt on his part to veil the truth; i.e., his intent to deal with Stewart's union support through means more effective than mere persuasion.

[73] The propensity of Respondent's high-ranking officials to react in this fashion was evidenced not only by Freed's special concern for Stewart's union sentiment, but also revealed itself in the terminations of Inez and Debra Tornquist.

[74] The fact that Respondent discharged other employees on grounds bearing general resemblance to the cause assigned for the termination of Stewart has been considered. However, the evidence offered in this connection was bareboned, without development of either the specific circumstances for the discharge or the background of the employees involved. Respondent's proffer in this regard fails to alter the persuasive evidence establishing that Stewart was terminated on pretextual grounds.

[75] Scott's name appears on G.C. Exh. 3, but that document apparently was not forwarded to Respondent until after his discharge.

[76] It is noted that Scott's termination slip reflects that he was present only an average of 30.3 hours weekly during a 35-week period.

[77] Based on the credited testimony of Mitton.

April 5 he was absent, and was discharged by Thomas for alleged absenteeism.

Carr claimed that he signed a union authorization card and started wearing a union button to work prior to doing so. He claimed that on April 4 he passed out union buttons to fellow workers and placed a union sticker on a door leading to the office of a foreman.[78]

Carr acknowledged that, in the event of absenteeism, "it is mandatory that you report to somebody or someone that you are not being at work. . . ." By his own admission, he had been absent 18 days in 8 months.

Carr's testimony that he reported his April 5 absence to Foreman Mitton was not believed. Thus, Carr testified that, shortly before 4 p.m. on *April 5*, he visited Mitton's home to discuss his inability to work that evening because of his wife's illness. According to Mitton, at this time, his wife was bleeding due to a "prior" operation and had to be taken to the hospital. According to Carr, Mitton told him to go ahead and take care of his wife and not to worry about working that evening.[79] However, Mitton denied that Carr had been to his home on April 5. Instead, according to Mitton, Carr on the afternoon of *March 8* came to his home with his children, and indicated that he was taking his wife to the hospital in LaFayette, Indiana. He was given permission to miss work that evening. I credit Mitton over Carr.[80]

In sum, even if Carr were to be believed that he openly manifested union support during the period prior to his discharge, I find that his termination was triggered by his unexcused absence on April 5, and occurred against a background of poor attendance, which rendered him vulnerable to discharge. There being no convincing evidence that Carr was a victim of disparate application of Respondent's attendance policies,[81] I find that his termination was not shown to be for other than legitimate considerations.

[78] It is noted that the foregoing is based on the uncorroborated testimony of Carr. He was not an impressive witness, and reservations exist as to the degree to which, if any, he openly engaged in union activity.

[79] I did not believe Carr's testimony that, in addition to the above, he called the plant that night to report his absence.

[80] Some support for Mitton's testimony exists in documentation. Resp. Exh. 39 is an absence report made out on Carr dated March 8, 1979, reflecting his absence due to the fact that his wife was to have surgery, and a return to work slip dated March 12, 1979, signed by Mitton, indicates that Carr had been approved for return to work. Resp. Exh. 22 is a medical insurance claim form, which substantiates that Carr's wife had surgery on March 9. In addition, contrary to Carr's assertion that he arrived at Mitton's home shortly before 4 p.m., the latter's timecard for April 5 shows that Mitton commenced work on that date at 3:30 p.m. Respondent's documentation does not conclusively negate the testimony of Carr. However, misgivings concerning Carr's reliability, together with the tendency in such documentation to confirm the testimony of Mitton, lead me to credit the latter in this respect.

[81] The termination slip prepared by Mitton on April 5, 1979, indicates that Carr only worked an average of 30.1 hours within a 27-week span. The General Counsel, in both the cases of Carr and Robert Scott, argues that the failure by Respondent to offer the time records of Carr and Scott warrant an adverse inference. It is noted in this connection that Jt. Exh. 2(o) in the case of Carr and Jt. Exh. 2(d) in the case of Scott reflect this data. It was my understanding, based on discussions on and off the record, that the General Counsel was afforded the opportunity to examine the underlying payroll records. In the circumstances, including the sheer volume of issues joined in this proceeding, it would be entirely inappropriate and prejudical to Respondent to draw an inference unfavorable to its cause by virtue of any such omission.

g. *Edda Van Laere*

In August, at Van Laere's request, she had been transferred to the second shift in her position as a forklift operator in the south coreroom.[82] On Friday, August 31, at the threshhold of the Labor Day weekend, Van Laere, while working, received a message that her daughter han been injured in a bicycle accident. Night Foreman Charles Duncan gave Van Laere permission to leave. Upon arriving at home, and examining her daughter, Van Laere claimed to have found that the injury was not severe. However, having left in midshift on Friday, Van Laere forefeited her right to earn pay for Labor Day.[83] For this reason, Van Laere did not report back to work. Instead, she took her daughter, and went to a local bowling alley where she bowled in a league.

She returned to work on Tuesday, September 4. Early in the shift her foreman, Robert Goudy, asked where she was on Friday night. Both Goudy and Van Laere admitted that she first referred to her daughter's injury. At this point, the testimony of Goudy and Van Laere is in conflict. While both agree that Goudy then pointed out that Van Laere had been seen at the bowling alley on Friday night, according to the latter, Goudy indicated that "Top Brass" reported that she was seen bowling in a "tourney."[84] She claimed to have denied bowling in a tourney, but that she admitted to having bowled. According to Goudy, however, Van Laere denied even being present at the bowling alley, but, when he referred to information he had received, Van Laere admitted having gone to the bowling alley, but claimed she only did so to take her husband there. According to Goudy, when he asked Van Laere why she had not reported back to work, Van Laere did not respond.

Goudy admitted that it was not his idea to fire Van Laere. Goudy also admitted that though Van Laere had been warned about her attendance both in January and February 1979, during the ensuing period, her attendance had improved considerably.

Foundry Superintendent Dean Hughes testified that he had received reports that Van Laere had gone to the bowling alley and bowled in a league on Friday night. He claimed to have instructed Goudy to check with Van Laere when she reported. Goudy reported back that Van Laere denied having bowled. Although Van Laere was permitted to complete her shift on September 4, when Hughes confirmed through a second eyewitness that Van Laere had in fact bowled on Friday night, he decided to discharge Van Laere for lying.

[82] Van Laere was transferred to nights on July 5 at her request because of alleged family problems.

[83] Under Respondent's holiday pay policy, employees, as a precondition for participation, must work the entire day before and the day after the holiday to receive compensation.

[84] Van Laere claimed that Goudy in the course of the conversation told her that top brass was watching her and that she had better "walk the chalk" as he did not want to lose her. Although Van Laere's version was not far from accurate, I am willing to give Goudy the benefit of the doubt and find based on his testimony that he simply told Van Laere that, if she were going to be off bowling, a lot of people would see her and management would be the first to learn, and that he would probably have to take disciplinary action.

Van Laere was a union protagonist who openly manifested her support. Earlier in April she was among the members of the pep set crew who were discriminatorily denied overtime after they began wearing union buttons. In addition, her husband also a protagonist of the Union had been unlawfully required to remain in his crane during downtime. Nonetheless, on consideration of the entire record, I am convinced that Respondent terminated Van Laere for cause. In this instance, I regarded Van Laere's testimony to be suspect. Her conduct on Friday evening struck as indefensible. In this instance, Goudy, who I have previously discredited, is aided by strong probability.[85] Consistent therewith, I credit Hughes and find that Van Laere at all times prior to her discharge denied that she had bowled, and that her discharge was forged after Hughes had confirmed with a second eyewitness that she had in fact done so. As the grounds on which Respondent acted were substantial and unchallenged by evidence of disparate treatment, I find that the General Counsel has not established by a preponderance of the evidence that Van Laere's termination was influenced by union considerations in whole or in part. Accordingly, the 8(a)(3) and (1) allegation in this respect shall be dismissed.

h. *Dan Watkins*

Watkins was terminated on September 17 because he allegedly "cheated" on his timecard. Watkins, as will be recalled, was one of the early employee protagonists of the Union. He attended union meetings, solicited cards, distributed union literature at plant gates, and often discussed his prounion views with his supervisors.

It will be recalled that, during the preelection period, Kenneth Freed met with Watkins in the so-called "soul cleansing session" in which Watkins sought to express his own reservations concerning the wisdom of union support and to elicit Respondent's position with respect thereto. Freed acknowledged that Watkins in that meeting conveyed that he had undergone "a change of heart" concerning the Union. Later, however, Watkins again openly manifested his union support, at least by authorizing his name to be included as a member of the in-plant organizing committee[86] and by serving as a union observer at the election conducted on May 10.

It will be recalled that Watkins' scheduled work shift as a maintenance electrician began at 11 p.m. However, he and coworker Grant Campbell frequently reported in advance of that hour to earn overtime. On September 17, according to the testimony of William Sexton, a security guard, Watkins entered the plant, passing the guardhouse while uttering words she could not hear. Sexton invited Watkins into the guardhouse whereupon both started talking. At some point in the conversation, Watkins picked up a timecard and punched in. Sexton related that "minutes" later Grant Campbell arrived and Watkins gave Campbell a timecard which Watkins had previously punched for Campbell.[87] According to Sexton, Campbell arrived at approximately 9:45. Sexton claimed that Watkins left the guardhouse for the machine shop at approximately 10:30 p.m.[88]

Watkins testified that he remained in the guardhouse and did not report to his work area because he could observe the electrical department from that location. Since he saw J. D. Holoman, an electrician on the earlier shift, in that area and not working, and failed to see anyone leave for a job, he elected to continue the conversation with Sexton. As for his punching in, he claimed that he did so only after observing Grant Campbell enter the parking lot, and that, as Campbell passed the guardhouse, Watkins told him that he was available to work if something came up. According to Watkins, Campbell said, "Okay."[89] According to Watkins, he left the guardhouse after observing one of the electricians leave on a job, an event which left Grant Campbell as the only remaining electrician in the department. Watkins credibly and without contradiction testified that, upon returning to his work area, he did not get a job assignment until 11 o'clock that evening.

Nothing was said concerning this matter for the balance of Watkins' shift on September 17. On September 18 and 19, he did not work due to iliness. He reported for work on Thursday, September 20. Upon his arrival, his foreman on the night shift, Jack Jones, informed him that he had received reports that maintenance electricians had been punching other timeclocks and that they were to punch in on the timeclock in the electrical department only. Jones specifically referred to the fact that someone had clocked in at the guardhouse, whereupon Watkins admitted that he was the one who had done so. In the course of the day, Watkins had two separate interviews with Freed, with his discharge communicated in the course of the second.

Freed claimed to have himself made the decision to discharge Watkins.[90] He also related that, after the "soul cleansing session" in April, he, together with Shoaf, was inclined to believe Watkins' expressions as to a change of heart about the Union. However, Freed discovered about 2 days later that in this respect they had been "conned."

Dan Lee testified that he first became involved in the matter on Wednesday when Carl Delaney related to Lee that Watkins had clocked in on Monday and stayed at the gatehouse without reporting for work.[91] Lee claims

[85] Among my reasons for disbelieving Van Laere was the fact that she had committed herself earlier to bowl in a regular Friday night league as a member of a team which she had joined despite a conflict with her work hours. She attempted to excuse this action on grounds that her foreman had told her that in the near future the plant would go on a 4-day week. I was not impressed.

[86] See G.C. Exh. 3, a letter dated May 2, 1979, identifying Dan Watkins as a member of the Union's in-plant organizating committee.

[87] Watkins testified that he did not punch in until he observed Grant Campbell arrive in the nearby parking lot.

[88] Sexton denied reporting this incident to management. Sexton had been instructed as a guard that she was not to have visitors in the guardhouse. Yet, though she had socialized on the occasion in question with Watkins for some 45 minutes, she was not reprimanded for her role in this matter.

[89] Sexton's account confirms that Grant Campbell knew that Watkins was in the guardhouse only "minutes" after the latter punched in.

[90] Freed acknowledged that it was unusual for him to make decisions as to the discharge of rank-and-file employees, but explained that, in this instance, he "was positive that if we discharged Mr. Watkins for any reasons, that it would end up in a hearing."

[91] No evidence exists as to how Delaney learned of the gatehouse incident. Sexton denied that she informed anyone

to have told Delaney, "Well [we] can't have that . . . fire him." According to Lee, he then reconsidered because he "wouldn't want to make a mistake," and therefore relayed the information given to him by Delaney to Freed. Lee specifically explained that because Watkins' name appeared on several objections to the election he wished to avoid firing him for the wrong reason and getting into trouble. It is significant that Lee testified that with Freed it was decided that the matter would not be discussed with others until after they had an opportunity to talk to Watkins.

On September 20 when Watkins returned to work, he was summoned to the office of Freed. Shoaf, Lee, Freed, and Delaney were present. Watkins was examined as to his version of the gatehouse incident. Watkins acknowledged that he had punched in at the guardhouse and that he remained there for some time thereafter.[92] Watkins argued that he was ready and able to work, and from his position in the guardhouse he could observe his work area and could join the crew if he saw them leave the work area.[93] According to Freed, the meeting concluded with Watkins being informed that the investigation would be carried to others, and that evening the decision would be made as to whether Watkins would be terminated. However, prior to the close of the meeting, Freed found it necessary to allude to Watkins' union activity. Thus, according to Watkins, Freed stated "a man is as good as his word and that Watkins had proved that his word was no good." Watkins sought clarification. According to the latter, Freed indicated that he had read in the papers that "2 days" after Watkins talked to Freed he made a complete about-face with respect to the understanding that Watkins would not actively campaign for a while at least.[94]

Several hours later, Watkins was discharged on conduct which Freed variously characterized as evidencing "cheating," "dishonesty," and "robbing." As shall be seen below, the appropriateness of these terms as applied to Watkins' offense reflects significant overstatement and involved exaggeration without benefit of any investigation that would support a reasonably founded conclusion that Watkins compromised any tangible interest of the Company.

Thus, it is a fact that maintenance electricians holding the same position as Watkins worked on an oncall basis. It is conceivable that they could work an entire shift without being summoned to perform a single task. Their considerable downtime permits them to do as they please, sleep, read, etc., or, as Foreman Jack Jones testified, leave the machine shop area, so long as their whereabouts are known.[95] Credible evidence through Watkins and Sexton establishes that shortly after Watkins punched in Grant Campbell, his coworker, entered and went to the machine shop with full knowledge that Watkins was in the guardhouse. Considered on the entire record, as an actual fact, the vice in Watkins' behavior on September 17 was twofold: (1) he punched his timecard at the wrong clock, and (2) he informed Grant Campbell that he would be in the guardhouse, rather than returning to the machine shop himself, noting that he would be in the guardhouse, and then, returning to the guardhouse and remaining there as long as he wished or until summoned him at that location to perform a job.[96] While Foreman Jones' testimony strongly suggests that Watkins' discrepancy was minor, Freed concluded that it amounted to "cheating." As shall be seen, Freed, while professing to act with caution, apparently arrived at this conclusion without even attempting to develop facts as to whether the Company was even inconvenienced by Watkins' offense.[97]

Respondent's testimony concerning the investigation purportedly held on September 20 prior to the discharge hardly allayed suspicion. As will be recalled, Lee deferred any investigation until after the matter was discussed with Watkins on Friday, September 20, for as Lee averred Freed had instructed him: "Well, before you do anything, we ought to find out if the man has a reasonable explanation for what happened." After the meeting with Watkins, it became clear that two areas of concern existed with respect to his "explanation"--the first being the question as to the duration of his stay in the guardhouse, and the second being Watkins' claim that his action, though wrong, was not that serious. Although Freed and Lee testified that they would have to follow a cautious course before disciplining Watkins, the alleged ensuing investigation was portrayed by Respondent's witnesses in a confused, if not contradictory, fashion, and hardly seemed tailored to assess possible bad faith on Watkins' part. At best, insofar as this record discloses, Freed sought to uncover little more than how much time Watkins actually spent in the guardhouse. Indeed, according to Freed, the investigation which followed the first conference with Watkins was limited to the interview of Sexton, a fact confirmed by the following excerpt from Freed's testimony:

> . . . the next person we talked to was the lady that was on the gate that night. And she came over to

[92] I believe the testimony of Lee and Freed that Watkins claimed that he had been at the guardhouse only 15 to 17 minutes.

[93] Based on a composite of credible aspects of the testimony of Freed and Watkins.

[94] Although Watkins was not considered impeccable, I believed his testimony in this respect because it was corroborated to a measured extent by Freed's own testimony. In this connection, it will be recalled that Freed testified that "2 days" after the April "soul searching session" he and Shoaf had found that they had been "conned" by Watkins into believing that he had had a change of heart concerning the Union. Freed's recollection of the September 20 meeting was confessedly unclear, but he did acknowledge that he at that time attempted, in connection with the April session, to call Watkins a liar "in a nice way."

[95] Jones testified that the responsibility for electricians to remain in the machine shop is lax, but those leaving the area are required to note where they are going in case a breakdown requires their service.

[96] See testimony of Respondent's witness Jack Jones, night-shift foreman in the machine shop, to the effect that such a course by Watkins would have been perfectly proper.

[97] Freed testified that he was aware of the sensitivity of imposing discipline on Watkins because as far as he was concerned Watkins was the Union's "main man." Therefore, he wanted to proceed with caution, and "to hear both sides of the story." However, he admitted that no one reported that work was available for Watkins while Watkins was in the guardhouse, and it is clear on the face of Freed's testimony that he did not bother to check with Watkins' superiors as to this element of the charge against Watkins.

> my office and she gave us her story and told us what happened. And that was as far as it went.[98]

Freed implicitly denied talking to Watkins' supervisors, Tom Campbell and Jack Jones, and also denied that anyone reported that the latter had been interviewed as part of the investigation.[99]

In sum, from beginning to end the evidence offered by the defense was unpersuasive. It bore all the trappings of pretext, including exaggeration, implausibility, and contradiction. At the same time, other factors bolster the view that the true reason for the discharge was unlawful. Thus, Watkins' superior, Tom Campbell, acknowledged that Watkins was a good electrician who in his several years at the plant developed the skills necessary to effectively perform that job as well as a familarity with Respondent's equipment and facilities. The discharge of Watkins was the work of Freed who viewed Watkins as the main proponent of the Union among Respondent's employees and whose own proclivity toward reprisal is evident in the discharge of Joma Stewart and perhaps even those of the Tornquists. Indeed, Freed's animus with respect to Watkins, on the basis of what was viewed by Respondent's managers as a betrayal, reappeared on the day of the discharge when Freed found it necessary to renew and express his displeasure with Watkins' earlier renunciation, and then almost immediate resumption, of union support.

Based on the foregoing, I find that the guardhouse incident was seized upon as a pretext for eliminating this staunch union supporter. It is concluded that said incident was blown beyond reasonable proportion in order to facilitate elimination of the individual regarded as the key employee protagonist of the Union, who had incurred the wrath of management by having misled Shoaf and Freed previously about a change in his prounion stance. I find that, by discharging Watkins on September 20, Respondent violated Section 8(a)(3) and (1) of the Act.

i. *Kathy Spear*

A complaint was issued during a recess in the hearing on April 8, 1980, alleging that a 3-day disciplinary suspension issued against Kathy Spear on October 3, 1979, and her discharge on February 27, 1980, were violative of Section 8(a)(1), (3), and (4) of the Act.

At the time of her termination, Spear was a hoist operator in the cleaning room, working the day shift under Foreman Bill Shoaf. Spear, during the organization campaign, attended union meetings, wore union insignia and stickers, and distributed union literature at the main gate on a number of occasions.[100] Though not called as a witness, prior to her discharge, she attended the instant hearing on January 21 and 23, 1980.[101]

On February 26, 1980, Spear was discharged with "absenteeism" being the assigned ground. The background shows that, between January and April 1979, Spear was absent on 10 working days. Toward the end of that time frame, Cleaning Department Superintendent Anno went through the cleaning room talking to employees about attendance. At the time, one employee was given a 3-day suspension. Thereafter, Spear, who had been off 10 days, inquired as to why she had received no discipline. According to Anno, he told Spear that he would let her know when her absentee record was too bad.[102]

Nonetheless, following April 1979, Spear's absenteeism admittedly continued. She conceded that her foreman, Shoaf, in August 1979, handed her a computer printout of her attendance record, stating that Spear had been "missing too much work."

On October 2, 1979, Spear did not report for work. Her explanation was that her daughter was sick and had to be taken to the doctor. She returned to work on October 3 with a medical excuse. When she obtained a back-to-work slip from the Company's nurse, Foreman Shoaf informed her that she would be given a 3-day disciplinary layoff.

Between January 1, 1980, and her discharge, Spear missed a number of days due to family or personal illnesses. She was absent on February 21 and 22, 1980, worked on Monday, February 25, 1980, and was again absent on February 26, 1980. On February 27, when Spear returned to work, she reported to Shoaf that she was absent the day before because her babysitter was ill, that Spear's furnace had broken down, and that she had no one to take care of her child. To this, Shoaf replied that he was sorry, but that she was terminated.[103]

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[98] If Sexton is to be believed, in such interview Freed was informed of the arrival of Grant Campbell, a fact tending to confirm Watkins' earlier explanation, and one which tended to signal that Watkins whereabouts would have been known to those in the machine shop.

[99] Lee testified to a far more comprehensive inquiry, which included interviews with Sexton, Tom Campbell, and Jones. In this regard, Sexton does not disclose an independent interview with Lee, though she admits that Lee was present when she met with Freed. Campbell denied being consulted in connection with the discharge, but did admit to a conversation with Lee "sometime in September" which was limited to an inquiry concerning markings on Watkins' timecard. Jones was not examined as to whether he was consulted. It would seem that, if Lee had actually engaged in such interviews prior to the discharge, he would have reported his findings to Freed, a fact which Freed denied.

[100] G.C. Exh. 3 is a letter dated May 2, 1979, from the Union to Respondent. It lists more than 80 names as constituting the "in-plant organizing committee." While Spear's name does not appear on the list, her husband, "Rumzie," was included.

[101] An ambiguity exists on the face of the record with respect to an allegation that the October suspension of Spear was violative of Sec. 8(a)(1), (3), and (4) of the Act. There of course is no evidence that such discipline violated Sec. 8(a)(4). In any event, in a colloquy with me, counsel for the General Counsel made representations to the effect that the 8(a)(3) allegations based on the suspension were no longer in issue. Respondent interpreted these representations in that fashion and from an overview of the record it is plain that Respondent made no serious effort to refute the meager evidence offered by the General Counsel in that respect. I find that the action by the General Counsel raises an estoppel against any further assertion that the suspension was unlawful, as Respondent, in reliance thereon, did not join issue through proof to a degree permitting a conclusion that the matter was fully litigated.

[102] The foregoing is based on the credited testimony of Anno, a believable witness. I prefer his testimony to that of Spear, while noting that the variance is slight. Her testimony that Anno told her not to worry about her absentee record seemed unlikely and was rejected.

[103] The General Counsel through a prejudicially leading question elicited testimony from Spear on direct examination to the effect that she was given no reason for her termination. This type of examination was regarded by me as failing to elicit credible, reliable proof. Identical questions were propounded with respect to other alleged discriminatees in circumstances where it was obvious that, based on the context of the terminal interview, all involved were aware of the ground for discharge. Throughout, I have given no weight to testimony secured under such conditions.

The General Counsel espouses a theory that Spear's termination ought be deemed unlawful because, despite a continuing absenteeism problem, she received no discipline until after her involvement in the Union. As the argument goes it was not until thereafter that her poor attendance was called to her attention, first in August, then by the 3-day suspension in October, and finally on February 27, 1980, when she was discharged shortly after having been granted time off to attend the instant hearing as a witness subpoenaed by the General Counsel. However, Spear's own testimony implies that she was unable to control an ongoing attendance problem which impaired her utility as an employee. By her own admission, her absenteeism mounted during this entire period. Chronic absenteeism, by its very nature, is assessed by managers on the basis of performance over a period of time. And the reasonableness of discipline, as absenteeism mounts, does not become suspect solely because it first emerges after the employee manifests union support. Specific evidence of union animus is required, or at least proof of disparate treatment. Here there is no such evidence. In the circumstances, I find that the General Counsel has not established by a preponderance of the evidence that Spear was terminated for reasons other than those invoked by Respondent in terminating hundreds of employees in 1978 and 1979. The 8(a)(1), (3), and (4) allegations with respect to Spear's discharge shall be dismissed.

IV. CASE 25-RC-7174

A. *The Challenges*

At the outset of the hearing, the determinative challenges consisted of 5 that had been previously overruled, but not counted by the Regional Director, and 61 that had been unresolved. Of the latter, the Petitioner withdrew its 51 challenges during the course of the hearing.[104] The remaining 10 challenges related to individuals named as discriminatees in the consolidated complaints herein; namely, William Bennett, Randy Carr, Ted Farley, David W. Freed, Vernon Hawkins, Walter Hembree, Robert Scott, Billy Turpin, Stan Worley, and Joma Stewart. With the exception of Stewart, all nine of these challenges shall be sustained, as the allegations of discrimination made on their behalf were unsubstantiated and there is no evidence that they had any reasonable expectancy of future employment. Having found that Joma Stewart on April 26, 1979, during the critical preelection period was discharged in violation of Section 8(a)(3) and (1) of the Act, her eligibility to participate in the election is established, and accordingly the challenge to her ballot shall be overruled.

During processing of the instant Decision, I, by telegram dated November 14, 1980, directed the Regional Director to open and count the 51 challenges withdrawn by the Union and the 5 originally overruled by the Regional Director on January 4, 1980. On November 24, 1980, I was administratively advised that the revised tally revealed that, of 895 eligible voters, 1 ballot was voided, and 394 were cast for, and 470 against, representation by the Union. As the only unresolved challenge (Joma Stewart) is insufficient to effect the results of the election conducted on May 10, 1979, it is evident that a majority of the ballots cast therein were against representation by the Union.

[104] See ALJ Exh. 1.

B. *The Objections*

Objections to employer conduct interferring with free choice in the May 10 election remain for consideration. All unresolved objections are predicated upon alleged misconduct coextensive with previously resolved independent unfair labor practice allegations in the consolidated complaints. Thus, certain grounds on which Petitioner challenges the validity of the election, including Objection 5 (removal of UAW badges), Objection 6 (surveillance), and Objection 8 (polling or surveillance), were the subject of unfair labor practice allegations found to have been unsubstantiated by the evidence. Accordingly, Objections 5, 6, and 8 are hereby overruled. On the other hand, Objections 1, 2, 3, 4, and 7 pertain to subject matter found herein to constitute unfair labor practices committed during the critical preelection period. Accordingly, I shall sustain Objection 1, insofar as it relates to threats of layoff; Objection 2, insofar as it relates to threats of job loss as related to employees through the Employer's campaign propaganda; Objection 3, insofar as it relates to the denial of overtime to members of the pep set crew; Objection 4, to the extent that it relates to interference with the right of employees to distribute union literature in nonwork areas, on nonwork time, and on company property; and Objection 7, insofar as it relates to the discharge of Joma Stewart.[105] Based thereon, I find that the Employer engaged in preelection misconduct impeding free choice and destroying the atmosphere necessary to a fair election.

CONCLUSIONS OF LAW

1. Harrison Steel Castings Company is an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent independently violated Section 8(a)(1) of the Act by threatening employees with layoff, by threatening employees with job loss if they designated a union or engaged in a strike, by advising employees to turn in union buttons to foremen if they decide to no longer support the Union, by denying employees access to the plant during their off-duty hours to engage in union activity in nonworking areas, and by impeding em-

[105] It is noted that Inez and Debra Tornquist were discharged during the critical preelection period. Although it is entirely possible that these discharges may have influenced the outcome of the election, both were nonunit employees, whose contact with those in the voting group appeared to be limited, and whose place of work appeared to be remote from the latter. In my opinion, the issue as to whether these discharges impaired the atmosphere necessary to free choice is not free from doubt, but in the circumstances need not be resolved.

ployees in the exercise of their right to engage in the distribution of union literature on nonworking time in nonworking areas.

4. Respondent violated Section 8(a)(1) and (3) of the Act by discharging Inez and Debra Tornquist on May 7, 1979, because they refused to engage in antiunion activity, and by discharging Joma Stewart on April 26, 1979, and Dan Watkins on September 21, 1979, in reprisal for their union activity.

5. Respondent violated Section 8(a)(1) and (3) of the Act by restricting Mike Van Laere to his crane and by denying overtime to Edda Van Laere, Mike Mitton, David Roach, Tom Lambka, and Don Soloman on April 14, 1979, in reprisal for union activity.

6. By the conduct described in paragraphs 3 and 5 above, together with the discriminatory discharge of Joma Stewart, as well as the findings heretofore made with respect to Petitioner's Objections 1-4 and 7, Respondent engaged in preelection misconduct interferring with the free choice of employees at the election conducted on May 10, 1979.

7. The unfair labor practices found above have an effect upon commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, it shall be recommended that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.[106]

Having found that Respondent discriminatorily discharged Inez Tornquist, Debra Tornquist, Joma Stewart, and Dan Watkins, it shall be recommended that Respondent offer them immediate reinstatement to their former positions or, if not available, to substantially equivalent positions, without loss of seniority or other privileges and benefits. It shall be recommended further that Respondent make them whole for any loss of pay sustained by reason of the discrimination against them from the date of their discharges to the date of a bona fide offer of reinstatement. Backpay shall be reduced by interim earnings and computed on a quarterly basis as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950). Having found that Edda Van Laere, Mike Mitton, David Roach, Tom Lambka, and Don Soloman were discriminatorily denied overtime work on April 14, 1979, it shall be recommended that they be made whole for the loss of earnings entailed. All backpay due in this proceeding shall include interest as authorized by *Florida Steel Corporation*, 230 NLRB 651 (1977).[107]

As the unfair labor practices found herein included discrimination attributable to Respondent's highest echelons while complaints containing meritorious allegations were pending, a proclivity to violate the Act is shown to a degree warranting a recommendation that Respondent be ordered to cease and desist from "in any other manner" interfering with employee rights guaranteed by Section 7 of the Act. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[108]

The Respondent, Harrison Steel Castings Company, Attica, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Impeding the right of its off-duty employees to gain access to the plant for the purposes of engaging in union activities in nonworking areas.

(b) Impeding employees in their right to engage in the distribution of union literature on plant premises in nonworking areas on their nonworking time.

(c) Threatening employees that loss of jobs could result from participation in an economic strike.

(d) Threatening employees that their designation of a union could result in a loss of jobs and layoffs.

(e) Advising employees to turn in their union insignia to foremen if they desired no longer to support the Union.

(f) Discouraging membership in a labor organization by discharging employees, by restricting employees to their work station, or by denying them overtime, or in any other manner discriminating with respect to their wages, hours, or other terms and conditions of employment.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Offer Inez Tornquist, Debra Tornquist, Jona Stewart, and Dan Watkins inmediate reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them, together with Edda Van Laere, Mike Mitton, David Roach, Tom Lambka, and Don Soloman, whole for the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other

[106] The Union seeks an order requiring Respondent to recognize and bargain with it as exclusive representative, as well as extraordinary remedies, including in-plant access, and direct personal notification of employees as to the unfair labor practice findings made against Respondent. However, no showing has been made that the Union at any time was designated by a majority. More significantly, it is concluded on the entire record that the violations found against Respondent herein do not rise to a level warranting an expansion of conventional Board remedies. Accordingly, the request for a broadened remedial package is denied.

[107] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[108] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

records necessary or appropriate to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Attica, Indiana, copies of the notice attached notice marked "Appendix."[109] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that the election conducted on May 10, 1979, be, and it hereby is, set aside, and that Case 25-RC-7174 be severed and remanded for the conduct of a rerun election at such time as the Regional Director for Region 25 deems appropriate.

[109] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."